

**Where Do Mediators (and Mediation) Fit in the Regulatory Scheme Governing Lawyers?
Unexplored and Unintended Consequences of Treating Mediators as Courts**

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DRAFT

International Legal Ethics Conference VII

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CULTURE, TECHNOLOGY, ETHICS, AND SOCIETY

Around the World in 80 Minutes? The Importance of Understanding Culture in Legal Practice & Legal Education (C-1)

Ray Campbell, Peking University School of Transnational Law (China); **Jan L. Jacobowitz**, University of Miami School of Law (US) (Moderator); and **Richard Zitrin**, University of California, Hastings College of Law (US)

As the world has become “smaller” through technological innovation and the explosion of social media, many more lawyers are interacting with people from dramatically different countries, societies, and cultures. Consequently, the need to enhance awareness and understanding of the impact of these differences, especially as it relates to the manner in which we communicate, has grown exponentially and become more acute. The significance of variables such as eye contact, body language, word choice, and communication method cannot be understated. Because communication is no doubt a fundamental component of the effective, ethical practice of law, lawyers must embrace cultural insight as a necessary skill for the successful lawyer. And legal educators should be exploring ways to incorporate the teaching of cultural insight and communication skills to their law students.

This panel of international lawyers will explore the impact of cultural differences on lawyering and legal education with the goal of both increasing awareness of the impact of culture on our everyday work lives, and providing tools for implementing cultural competence and communication in practice and as an educational tool. The presentation will illustrate how understanding an individual's cultural background improves empathic insight and assists in effective communication. A lawyer who has insight into the cultural aspects of the person being addressed – whether client, opposing counsel, colleague, or judge – is undoubtedly more effective.

The panel will be an interactive presentation, sharing examples and exercises to engage the audience in an animated discussion of the value of educating law students and lawyers to achieve cultural competence.

LawWithoutWalls: An Inquiry into the Future of Law Practice (C-2)

Soledad Atienza, IE University, IE Law School; (Spain); **Ray Campbell**, Peking University School of Transnational Law (China); **Michele DeStefano**, Miami University School of Law (US); **Anna Donovan**, University College London (UK); **Helga Kristín Auðunsdóttir**, Bifrost University (Iceland) and **Erika Pagano**, LawWithoutWalls (US) (Moderator)

Now entering its seventh year, LWOW has grown to a Community of nearly 1000 people at the cutting edge of innovation in legal education and practice. Together, we explore what's happening in the legal profession today and, more importantly, where we are headed in the future. How is technology influencing us, and where will forces like globalization and the changing face of the profession take us? LWOW is an incredible, intense study involving academics, practitioners, students, entrepreneurs, venture capitalists, and more to seriously examine the most pressing questions facing our profession. This program will bring together past participants to discuss cross-cutting themes and future forecasts.

Technology and the Provision of Legal Services to the Poor and Middle Class in the USA and Beyond (C-3)

Ben Barton, The University of Tennessee College of Law (US) (Moderator); **Jessica Steinberg**, George Washington University Law School (US); **Stephanos Bibas**, University of Pennsylvania Law School (US); and **Tanina Rostain**, Georgetown Law Center (US)

America is on the forefront of the digital revolution in law, from online legal services, to electronic discovery tools, and the eventual use of so called “AI” in law. This panel will overview the current state of the technology, argue its pros and cons, and discuss how it might or might not help address America's longstanding “Access to Justice” crisis. It will also cover the progress in the EU and elsewhere.

EMPIRICAL PERSPECTIVES ON THE LEGAL PROFESSION AND LEGAL ETHICS

Alternative Approaches to Advocating on Behalf of Vulnerable Clients: Through the Lens of Addiction, Sexual Assault and Asylum (E-1)

Kate Seear, Monash University (Australia) (Moderator); **Neil Graffin**, The Open University Law School (UK); and **Francine Ryan**, The Open University (UK)

First, we assess the ethical issue of how retelling asylum stories can affect legal practitioners and asylum seekers. We will discuss how the telling of narratives concerning, for example, persecution, torture, ill-treatment or sexual violence can have the effect of re-traumatizing asylum seekers, but also causing psychological harm to listeners.

We will also consider how 'robust' advocacy in courts can cause harm to individuals in cases of sexual violence. We will argue that the role of advocate training should be to ensure that advocacy methods are both effective and ethical. It is proposed that the lack of compulsory specialized training in sexual assault cases is contributing to inappropriate and potentially unethical advocacy methods.

Lastly, we consider how client representation involves the process by which lawyers make strategic decisions about how to portray clients in their work. Lawyers frequently make decisions, for example, about how to 'construct' a client's past conduct and life history. In the process, lawyers often focus on narrow legal questions, such as whether particular framings are legally possible, advantageous or disadvantageous. This is considered through an examination of the labeling of clients who use drugs as drug 'addicts'.

Neil Graffin: *Interviewing Asylum Seekers: Ethical Issues for Legal Practitioners and Researchers*

This paper will assess the ethical issue of how retelling asylum stories can affect legal practitioners/ researchers and asylum seekers. It will discuss how the telling of narratives concerning, for example, persecution, torture, ill-treatment or sexual violence can have the effect of re-traumatizing asylum seekers, but also causing psychological harm to listeners. This paper will assess the training given to asylum practitioners and researchers in the UK and will consider if this is sufficient given the multi-faceted issues presented. This paper is part of a wider project which looks at the enhancement of procedural safeguards within asylum interviewing and the presenter will seek views of attendees on their views and experiences.

Kate Seear: *A 'Necessary Evil'? Legal Ethics and the Strategic Deployment of 'Addiction' Concepts*

Addiction features in legal settings with increasing frequency. Lawyers are often motivated to position their clients' drug use as a medical condition in the form of an 'addiction' on the basis that doing so opens up various legal arguments of benefit to them. These processes also have adverse consequences, however, including the potential to stigmatize and marginalize people who have been labeled as 'addicts'. In this paper, I argue that strategic decisions around the 'framing' of clients' drug use should be understood as an ethical problem. I also argue that lawyers need to develop a greater appreciation of the discursive and material effects of these processes for those they represent. Drawing upon interview data collected as part of a major new study on the work of Australian and Canadian lawyers whose work involves addiction, and combining feminist, science and technology studies and performativity theories of law, I argue that legal strategizing can simultaneously benefit clients and reinforce drug-related stigma, especially where lawyers construct (or assume) their clients as non-agentive or irrational. This is of concern because people who use drugs are often already assumed to be non-agentive and irrational, and highly stigmatized and marginalized as a result. I call for more critical work that reflects on the 'ethics' of such practices. Using Christine Parker's 'ethics of care' model, I conclude with a discussion of how lawyers might navigate cases where 'addiction' features in the future, with a view to improving the impact of legal practice on vulnerable populations.

Francine Ryan: *Time for Change: The Need for Ethical Advocacy in Serious Sexual Assault Cases*

Traditionally the adversarial trial process has been a battle, pitching one advocate against another, in the hope of persuading the jury their version of the case is the right one. Justice is done when one advocate triumphs but at what cost? Research into the conduct of rape trials has identified practices of inappropriate questioning and brutalizing treatment of complainants. Recently, the media has highlighted the consequences of 'robust' criminal advocacy following the suicide of two rape victims after giving evidence. There is real concern that inappropriate advocacy methods are causing additional harm to victims. This paper will argue that the role of advocate training should be to ensure that advocacy methods are both effective and ethical. Advocacy is a specialist skill the quality and excellence of which will only be achieved through appropriate advocate training which incorporates a strong ethical framework. It is argued that the lack of compulsory specialized training in sexual assault cases is contributing to inappropriate and potentially unethical

advocacy methods. To ensure that advocates are able to conduct cases appropriately there needs to be careful consideration of what specialized skills advocates require to handle serious sexual assault cases. In examining advocate training the role of ethical advocacy in an adversarial system needs to be explored. A recognition that good quality ethical advocacy should underpin the criminal justice system and is necessary to meet the needs of both complainants and defendants in serious sexual assault cases is required.

Comparative and Empirical Assessment of Ethical Values of Asian Law Students (E-2)

Richard Wu, University of Hong Kong (Hong Kong) (Moderator); **Grace Leung**, Chinese University of Hong Kong (Hong Kong); **Adrian Evans**, Monash University Faculty of Law (Australia); and **Mohd Yazid Bin Zul Kepli**, International Islamic University (Malaysia)

This panel undertakes a comparative and empirical study of the ethical values of Asian law students. This topic is significant because lawyers play an important role in the administration of justice and information about their values can help us in assessing the quality of justice and legal systems involved. Moreover, a study of law students' values can help us predict their future behaviors and ethical decision-making in legal practice. However, there has been a paucity of research into the values of Asian lawyers or law students.

This panel attempts to evaluate what values are empirically important in determining the decisions of Asian law students towards similar scenarios containing ethical dilemmas. It brings together legal ethics scholars from the Australasian-East Asian region to discuss the preliminary findings from a survey instrument adapted from a similar study of the Australian law students' values undertaken by Evans and Palermo (2002). They will also explore the differences in value orientations of law students and possible gender differences in the value hierarchies of Asian law students in these Asian jurisdictions.

This panel will be relevant to legal scholars interested in the values of Asian law students and lawyers. It will promote debates on professional socialization of law schools and the value systems of law students in the Asian region. It will also contribute to the teaching of legal ethics and professionalism as well as the reform of law school curricula in Asia.

Acknowledgement: The research for the papers in this panel was fully supported by General Research Fund (Project Nos. HKU750913H and 17410914) of the Research Grants Council of Hong Kong

Grace Leung: *Comparing Law Students' Ethical Values in Hong Kong and Australia: Two Common Law Jurisdictions in the Asian Pacific Region*

Recent literature on legal ethics, professionalism and legal education has shown that little work is done on studying and comparing the ethical values of law students in the Asian Pacific Region. This paper reports on the empirical findings of a study on the ethical values of Hong Kong students, which is part of a wider study of the values of law students in the Asian Pacific Region. It adapted a questionnaire from the study of values of Australian law students by Evans and Palermo (2002) and sought the responses that Hong Kong law students made to eight scenarios containing different ethical dilemmas. It then compares the findings with the responses of their Australian counterparts. This paper evaluates what values are empirically important in determining the decisions of law students in Hong Kong and Australia towards similar scenarios containing ethical dilemmas. It also compared the value orientations of law students and gender differences in the value hierarchies of law students in Hong Kong and Australia, two common law jurisdictions in the Asian Pacific Region.

This paper is significant as it represents the first empirical legal research project undertaken on comparing the values of law students in Hong Kong and Australia. It contributes to academic discourse on professional socialization of law schools and value system of law students in the Asian Pacific Region, and also contributes to the teaching of legal ethics and professionalism as well as the reform of law school curriculum in the Asian Pacific Region.

Acknowledgement: The research for this paper was fully supported by General Research Fund (Project No.17410914) of the Research Grants Council of Hong Kong

Richard Wu and Mohd Yazid Bin Zul Kepli: *Comparing Law Students' Values in Hong Kong and Malaysia: Two Common Law Jurisdictions in Southeast Asia*

Recent literature on legal ethics, professionalism and legal education has shown that little work is done on studying and comparing the ethical values of law students in Southeast Asia. This paper reports on the empirical findings of a study on the ethical values of Hong Kong and Malaysian law students, which is part of a wider study of the values of law students in the Asian Region adapting a questionnaire from the study of values of Australian law students by Evans and Palermo (2002). The paper sought and compared the responses that Hong Kong and Malaysian law students made to eight scenarios containing different ethical dilemmas.

This paper evaluates what values are empirically important in determining the decisions of law students in Hong Kong and Malaysia towards similar scenarios containing ethical dilemmas. It also compares the value orientations of law students and gender differences in the value hierarchies of law students in Hong

Kong and Malaysia, two common law jurisdictions in Southeast Asia.

This paper is significant as it represents the first empirical legal research project undertaken on comparing the values of law students in Hong Kong and Malaysia. It contributes to academic discourse on professional socialization of law schools and value system of law students in the Asian Region, and also contributes to the teaching of legal ethics and professionalism as well as the reform of law school curriculum in the Asian Region.

Acknowledgement: The research for this paper was fully supported by General Research Fund (Project No.17410914) of the Research Grants of Hong Kong

Grace Leung and Natalie Lai: *Gender and Values in a Transforming Society: An Empirical Study of Future Woman Lawyers in China*

Men and women hold different reasoning and value systems, and women are assumed to be “more ethical than men” (Jackall, 1988). In spite of research attempting to prove such claims, the findings have remained mixed and divided (Schwartz, 1998). Previous literature also reflect a paucity of empirical research on gender and values of Asian law students and lawyers. This study adopted a questionnaire from Australian study of Evans and Palermo (2002) to assess law students’ ethical values in Mainland China, one of the fastest growing and changing country in Asia and the world. This paper reports on the findings of the study on the gender differences in value priorities of Mainland Chinese law students.

This paper discusses the struggle of female law students in Mainland China, and studies how they prioritize their ethical values. It first examines how the existing literature looks at gender and values, which is followed by the analysis of the empirical data collected for this study. The paper then discusses the data collected through in-depth interviews with female law students in Mainland China, and evaluates the difficulties they have encountered in their career pursuit because of gender, as well as the influences and obstacles encountered by these future Chinese women lawyers on their value formation.

The findings suggest that stable but situational gender differences exist in the value ranking of Mainland Chinese law students. In particular, the women respondents ranked achievement-oriented values significantly higher than their male counterparts. Such findings shed light on future gender and value studies in China, and gender differences on value hierarchies is a fertile research area in the Greater China and Asian Regions.

Acknowledgement: The research for this paper was fully supported by General Research Fund (Project No.HKU750913H) of the Research Grants Council of Hong Kong

Richard Wu: *An Empirical Study of Law Students’ Values in Hong Kong and Singapore: The Fragrant Harbour and the Lion City*

Recent literature on legal ethics, professionalism and legal education has shown that little work is done on studying and comparing the ethical values of law students in Hong Kong and Singapore. This paper reports on the empirical findings of a study on the ethical values of Hong Kong and Singaporean law students undertaken by the author and Helena Whalen Bridges, Associate Professor of Faculty of Law, National University of Singapore, which is part of a study of the values of law students in three Asian common law jurisdictions and adapting a questionnaire from the study of values of Australian law students by Evans and Palermo (2002). The paper sought and compared the responses that Hong Kong and Singaporean law students made to eight scenarios containing different ethical dilemmas.

This paper evaluates what values are empirically important in determining the decisions of law students in Hong Kong and Singapore towards similar scenarios containing ethical dilemmas. It also compares the value orientations of law students and gender differences in the value hierarchies of law students in Hong Kong and Singapore, two common law jurisdictions in Asia.

This paper is significant as it represents the first empirical legal research project undertaken on comparing the values of law students in Hong Kong and Singapore. It contributes to academic discourse on professional socialization of law schools and value system of law students in the Asian Region, and also contributes to the teaching of legal ethics and professionalism as well as the reform of law school curriculum in the Asian Region.

Acknowledgement: The research for this paper was fully supported by General Research Fund (Project No.17410914) of the Research Grants Council of Hong Kong

Ethics in Elder Law (E-3)

Lise Barry, Macquarie University (Australia); **Margaret Hall**, Thompson Rivers University (Canada); **Mary-Ann de Mestre**, John de Mestre & Co Pty Ltd (Australia); and **Heather Campbell**, LLM student, University of Saskatchewan, College of Law (Canada)

Moderator: Linda Haller, University of Melbourne (Australia)

Increasingly lawyers are called upon to work with older clients as they navigate the law associated with aging. This includes appointing guardians and substitute decision makers, engaging in advance planning around medical care, accommodation and end of life decisions, assessing the legal capacity of clients, and dealing with allegations of elder abuse. In this program, the proposed papers provide an overview of empirical research in this area from Australia and Canada including: 1) The Lawyers’ Role in Assessing Older Clients’ Capacity for Legal Decision Making; 2) The Lawyers’ Role in Preventing Financial Abuse of Older People; 3) The Intersection of Law and Medicine in Constructing Capacity; and 4) The Lawyer’s Role in Investigating Elder Abuse.

Lise Barry: *Capacity Complaints at the NSW Office Of Legal Services Commission*

Lawyers are increasingly called upon to work with older clients who may have a cognitive impairment and whose capacity is in doubt. In NSW Australia, there is conflicting guidance available for lawyers who work with older clients in this situation, and we know very little about how lawyers go about this process. This presentation will present the findings of the author's original research examining the capacity complaints files of the NSW Office of Legal Services Commissioner from 2011 to 2013. These files provide insights into the complaints process itself, whilst at the same time, highlighting some of the pitfalls for lawyers unprepared for dealing with elder clients and their families. Drawing on the complaints files, the author will highlight some of the practices of capacity assessment and the important role that lawyers play in promoting the autonomy of vulnerable older clients, and also in protecting them from abuse. The author concludes by discussing some proposals for better clarifying a lawyer's responsibilities when taking instructions from at-risk elders and proposes some further recommendations related to legal education.

Mary-Ann de Mestre: *Preparation, Execution and Use of Powers of Attorney*

The responsibility of a prescribed witness to an Enduring Power of Attorney goes beyond ensuring the signature of the principal executing the instrument is genuine. The prescribed witness is required to explain the effect of the instrument, to witness the signature of the principal and to certify that the principal appeared to understand the effect of the power of attorney. If doubts are raised about the principal's understanding of the "effect" of the Enduring Power of Attorney, the prescribed witness has not only a statutory obligation but also an ethical obligation to refuse to witness and certify the instrument. That obligation, in theory, extends to when the witness thinks the principal may be signing the instrument under duress, undue influence or pressure from another person. Similarly, a legal practitioner has an ethical obligation to ensure that the principal has the requisite "decision-making capacity" and is not "incommunicate" before execution of the instrument. Any departure from these ethical standards has the potential to result in the exploitation of the principal whether by fraud, breach of fiduciary duty, unconscionable conduct, unjust enrichment or undue influence being exerted over the principal to obtain a benefit via the instrument.

A number of prescribed witnesses (as well as trusted appointed attorneys) are not sufficiently familiar with the procedure or the potential consequences associated with the nature and effect of such an instrument. In the Supreme Court of New South Wales, there are a number of cases that attempt to deal with the consequences associated with the misuse of a power of attorney, either by a prescribed witness or the appointed attorney. This paper seeks to explore some of the ethical challenges associated with the preparation, execution and use of powers of attorney, specifically in relation to the potential for financial exploitation

and abuse of older persons. The presentation is an extension of the author's research recently conducted for a submission to the Parliament of New South Wales Inquiry into Elder Abuse.

Margaret Hall: *Guardianship for the Old: Ethical Implications of the Mental Capacity Construct*

Mental/decision-making capacity is a legal fiction or construct that works differently, for the purpose of achieving different objectives, in different contexts. In the context of guardianship for the old, the identification of capacity is largely controlled by medical actors. This paper suggests that medical assessments of "mental capacity" carried out in connection with guardianship applications for the old are more accurately described as evaluations of vulnerability. Contra mainstream legal narratives, medical actors are not "doing it wrong"; rather, the mental/decision making capacity construct is fundamentally incoherent in the context of guardianship for the old, and cannot be measured with any accuracy or consistency. The need to articulate vulnerability in the legally constructed language of mental/decision-making capacity (i.e. to describe vulnerability in terms of capacity) gives rise to significant ethical and practical difficulties for all players in this system. This paper concludes that the legal rules which create and regulate systems of guardianship for the old must be brought into alignment with the identification/evaluation of vulnerability. The paper includes a discussion of how, in the meantime, lawyers working with older clients may incorporate this understanding of the limits of the mental capacity construct in the context of guardianship for the old (as opposed to discrete transactions such as wills) into their practice to reduce these practical and ethical difficulties.

Heather Campbell: *Hiring Private Investigators in Elder Abuse Cases: Ethical Considerations for Lawyers*

As our population ages and societal awareness about elder abuse grows, lawyers are increasingly encountering clients who express concern that an elder loved one is being mistreated. These allegations arise in various contexts, and sometimes, for ulterior motives. And as more and more private investigators are now offering elder abuse investigation services, it can be tempting to hire a modern day Sherlock Holmes to conduct surveillance and gather information. However, using a private investigator to investigate alleged elder abuse triggers several ethical issues for lawyers. This presentation will explore various situations in which a private investigator may be a legal but unethical tool to investigate suspected elder abuse. As Canadian boomers' potential inheritances are projected to be the largest intergenerational transfer of wealth in history, particular attention will be paid to disputes that involve adult siblings battling for control of their aging parent's financial affairs. The presentation will conclude with a discussion of strategies lawyers can take to minimize ethical pitfalls.

Law Students and Law Faculty: Professional Challenges (E-4)

Milan Markovic, Texas A&M University School of Law (US); **Carole Silver**, Northwestern University Pritzker School of Law; **Supriya Aery**, Aery Law Associates / PAAJAF (India); and **Rita Shackel**, Sydney Law School, The University of Sydney (Australia) (Moderator)

Milan Markovic and Ryan Scoville: *How Cosmopolitan Are International Law Professors?*

International law is formally universal. Yet American views of international law on issues ranging from the use of force to minimum labor standards are starkly different from those of many other countries.

We contend that this phenomenon can partly be traced to legal education. Conducting a novel study of the educational and professional backgrounds of nearly 150 legal academics, we reveal striking evidence that most professors of international law in the United States lack significant foreign legal experience, particularly outside of the West. Sociological research suggests that this tendency leads professors to teach international law from distinctly nationalistic and Western perspectives.

To bridge cross-national differences, we identify a number of potential options, including greater emphasis on cosmopolitanism in faculty hiring. Until conditions change, U.S. lawyers will internalize views about “international law” that are not international in any meaningful sense.

Carole Silver and Swethaa

Ballakrishnen: *“Getting to Know You”? International Students in U.S. Law Schools*

International legal education used to be described in terms of the number of international law courses offered by a law school. Today, it is possible to consider international legal education from a different framework, emanating from the mobility of law students who, by their presence, offer the promise of bringing an international aspect to their law school.

While increasing numbers of international students enroll in U.S. law school JD and post-JD degree programs, little is known about their experiences or their contributions to their law school communities, much less about their interaction with the larger U.S. legal profession generally. Do international students experience law school similarly to their domestic classmates? How do international students experience their interaction with domestic students and faculty?

What explains differences among international students in their law school experiences, and what strategies do they use to acclimate themselves? In this project, we take aim at these issues and provide a first analysis of the characteristics, motivations and experiences of

a set of approximately 50 international law students enrolled in US law schools, based on interviews conducted in 2015-2016.

Rita Shackel, Nerissa Soh, Fiona Burns and Garry Walter: *Career Ambivalence as a Potential Correlate of Law Student Mental Distress*

There is a large body of international research that has revealed that law students experience a high level of mental distress, consistent with the high levels of mental distress observed within the legal profession itself. Evidence suggests that law students in Australia and North America are increasingly feeling anxious about their chosen career and future employment opportunities given the continually increasing number of law graduates and resulting increased competition for law student internships, clerkships and graduate entry positions. Anecdotally at least law students are seemingly altering their patterns of study whilst at law school to accommodate more work experience and greater employment in order to become more competitive in the employment marketplace on graduating from law school. However, there is little research that has examined the link between law student distress and work commitments during law school, and anxiety about career choice or career prospects, and professional identity. This paper discusses the findings of research conducted at Sydney Law School with a view to exploring possible associations between law student distress and dissatisfaction with their chosen course of study and career choice. We draw on quantitative and qualitative data from a survey of law students conducted in 2013 (N=610).

Supriya Aery: *Indoctrinating Legal Ethics: An Empirical Reflection for the Need to Teach Culture in Law School*

The paper through experiential derivatives is an attempt to identify why, despite established code of ethics, curriculums and regulatory bodies, professional legal ethics has negligible impact on deterring recurrence of unprofessionalism.

We in the legal profession are living witnesses and participants of exhilarating but professionally perilous periods. As stakeholders of the legal profession and legal education, we ask ourselves whether particular actions are permissible and we look for answers in the formation of professional identity and during moments of student transition. We strive to comprehend the lengths an attorney can go in order to be effective opposing counsel or advocate before a judge, acting in the best interests of his/her client, while remaining within the precincts of codes of conduct and ethical principles.

While the answer lies in the codes of conduct, ethics is a subset of culture, which in turn is the ways of living adhered to by human beings transmitted from generation to generation. The ways of living affected by religion or theology, scientific discoveries, and historical-technical developments, formulate structures of moral precepts, principles and values that in turn inform ethical norms and practices.

Can we say decision making is identifiable through culture? Are lawyers and judges distinguishable by culture? Is legal ethics affected by culture? Is the law making process under the role of culture?

This paper runs in two parts.

Part I of the paper is a study of culture in Ghana, West Africa and India. The purpose of Part I is to identify and define boundaries where culture plays a role in formulation and regulation of the legal profession and legal ethics. It lays forth examples of how in different cultures, legal ethics is ancient and inherent in the delivery of justice.

Part II examines the conflict in legal ethics between lawyers and judges that is reflected in respect of confidences, truthfulness in statements to others, in the approach towards cases, negotiations and judgments. It establishes that the resolution of legal ethics issues arising in practice with lawyers and judges lies in the culture that law schools offer, inclusive of:

- a. mode of class room teaching,
- a. implementation of code of conduct of law professors, and
- a. art of inculcation of legal ethics in curriculum.

In class room teaching, we often ask: Are our teachings well received? Should teaching of professional responsibility differ for students from different cultures? Part II suggests the framework to protect the morality of future lawyers and judges.

The paper concludes by asserting that the soul of the legal profession is imprinted by the culture conveyed at law school. If the law school takes forth its responsibility religiously, the issues of corruption, malpractices, misconduct and barriers to access to justice shall be minimized.

Lawyers' Professional Conduct In the Face of Political Challenge (E-5)

Lynn Mather, SUNY Buffalo Law School (US) (Moderator); **Sida Liu**, University of Toronto (Canada); **Julija Kiršienė**, Vytautas Magnus University (Lithuania); **Edita Gruodyte**, Vytautas Magnus University (Lithuania); and **Waheed Riaz**, Waheed Riaz Law Associates (Pakistan)

How do lawyers maintain ethical values and conduct themselves professionally when confronted by political challenges? Indeed, what actually constitutes legal professionalism during a severe political crisis? This program explores such questions using empirical evidence from countries undergoing political transformation. Sida Liu will present research on "Criminal Defense in China: The Politics of Lawyers at Work," drawing on his forthcoming book. Based on extensive interviews with lawyers across China from 2005-2015, the paper studies the everyday work and political mobilization of criminal defense lawyers and raises searching questions about law and lawyers, politics and society in China. Julija Kiršienė and Edita Gruodyte will present their new research on "The Role of a Lawyer from the Perspective of Public

and Lawyers: Empirical Study in Lithuania as a Post-Soviet Country." Using public opinion surveys and data from lawyers about Lithuanian law practice, this paper explores the changing values of professionalism, decline in public opinion about lawyers, and lawyers' dissatisfaction with their profession. Waheed Riaz will present research on "Change in Professional Conduct after Lawyers' Movement in Pakistan," focusing on the lawyers' movement that emerged in 2007 after the forced resignation of the Chief Justice of Pakistan. With widespread participation of lawyers, this movement not only changed the professional conduct of lawyers towards the courts, but it also changed their professional conduct and legal ethics thereafter. Lynn Mather (Moderator) will situate the research reported on these countries in a wider theoretical and empirical context.

Sida Liu: *Criminal Defense in China: The Politics of Lawyers at Work*

This book project studies empirically the everyday work and political mobilization of defense lawyers in China. It builds upon 329 interviews across China, and other social science methods, to investigate and analyze the interweaving of politics and practice in five segments of the practicing criminal defense bar in China from 2005 to 2015. This book is the first to examine everyday criminal defense work in China as a political project. The authors engage extensive scholarship on lawyers and political liberalism across the world, from 17th-century Europe to late 20th-century Korea and Taiwan, drawing on theoretical propositions from this body of theory to examine the strategies and constraints of lawyer mobilization in China. It brings to studies of lawyers and politics a fresh perspective through its focus on everyday work and ordinary lawyering in an authoritarian context and raises searching questions about law and lawyers, politics and society, in China's uncertain futures.

Julija Kiršienė and Edita Gruodyte: *Role of a Lawyer from the Perspective of Public and Lawyers: Empirical Study in Lithuania as a Post-Soviet Country*

The crisis of legal profession in the global discourse is seen as a three-dimensional problem, consisting of the changing values of professionalism, decline in public opinion about lawyers and lawyers' dissatisfaction with their profession.

The public opinion surveys show that trust in the national justice systems in the Post-Soviet EU countries – such as Lithuania – is significantly lower in comparison to the average trust level in 28 EU member states. In other words, these surveys show that lawyers in the Post-Soviet countries do not meet the expectations of society. Academics, clients, consumer groups, and state institutions of these countries harshly criticize lawyers. They accuse them of legal nihilism, infringements of law, ignorance of ethical and moral norms, manipulation of law and the entire legal system. Moreover, a worldwide survey of 2010 conducted by the International Bar Association revealed that over 70 percent of lawyers within the Commonwealth of Independent States

(CIS) stated that corruption posed a problem in their respective jurisdictions. No other region has a higher percentage. The survey also disclosed that about 28 percent of the respondents from CIS countries “believed that more than half of lawyers in their jurisdiction would knowingly engage in transactions that could be corrupt.”

Using quantitative and qualitative data of the empirical research project implemented in Vytautas Magnus University Faculty of Law in 2012-2014, we will present how legal profession in Lithuania was affected by the political and economic transformation processes. Quantitative data on the practice of the Courts of Honor in legal profession in Lithuania, including data about disciplinary violations in five legal professions (judges, attorneys, prosecutors, notaries and bailiffs), sanctions and etc., suggests that most of the ethical violations conducted by lawyers and discussed in mass media even do not reach the Courts of Honor because violating lawyers voluntarily leave their profession. Such practice allows the violator to evade negative consequences, to retain her/his good moral standing, and then later to apply to legal profession without limitations. On the other hand, qualitative data which was obtained through the qualitative interviews of the representatives of legal professions and society shows that the adversarial model of lawyering is clearly dominant in Lithuania. It should be mentioned that adversarialism often manifests itself by too zealous representation of the client, benefiting from the opposing colleagues oversight, error or incompetence, legal interpretation in clients’ favor, which sometimes turns into the manipulation of law.

Waheed Riaz: *Change in Professional Conduct after Lawyers’ Movement in Pakistan*

Lawyers’ movement emerged in 2007 due to the demand of forced resignation by the Chief Executive of Pakistan, Pervaiz Musharraf, from the then Chief Justice of Pakistan, which subsequently turned out to be the cause for restoration of the Higher Judiciary. Every lawyer of this jurisdiction, directly or indirectly, participated in this movement, even at the stake of his professional duties and particularly legal ethics. For two years, this movement directed the conduct of lawyers to achieve the target. Lawyers contrary to their professional conduct had to shout, fight, become the victims of disrespect and subject to arrest and injury, and to the havoc some lost their life for the cause. This long standing struggle absolutely changed the professional conduct of lawyers towards the courts, state institutions, staff of the courts and more importantly towards the opponent lawyers and even the civil society. The target for restoration of the judiciary were achieved but the harshness encompassed the professional conduct of lawyers. Ethics in the professional conduct deteriorated thereafter and the intention to achieve anything positive adopted a violent way.

This paper will give the reasons of deterioration of lawyers’ professional conduct, its effects and thereafter the efforts of the Bar Councils of the country to achieve the standards of professionalism par to the international jurisdictions.

Professional Value Formation and Moral Outlook of Future Lawyers at Law School, as Trainees and in their First Year of Practice (E-6)

Vivien Holmes, Australian National University (Australia); **Freda Grealy**, Law Society of Ireland (Ireland); **Richard Moorhead**, University College London, Centre for Ethics and Law (UK); and **Yael Efron**, Zefat Academic College School of Law (Israel)

Moderator: Tony Foley, Australian National University (Australia)

Empirical studies provide fresh insight into how ethical acuity develops. These papers provide insights at three points along the path to the practice of law: law school, vocational training and the first year in practice. Richard Moorhead reports on a large quantitative study of law students (in the US, England and Wales) examining their values, and professional and moral outlooks. He explores whether ethicality degrades over time and factors predicting differences in moral outlook. Freda Grealy examines the effectiveness of an intervention course at vocational training level (in Ireland) that explicitly foregrounds professional values and moral development. She considers whether resulting ethical professional identity is increased and assessable. Foley, Holmes, Tang & Rowe report on a quantitative study examining the perceptions of lawyers new to practice (in Australia) as to what professionalism means, whether they see themselves as professionals, and the influence of a their workplace culture in developing/stymying professional values.

Richard Moorhead: *The Values, Professional and Moral Outlook of Law Students*

Freda Grealy: *Can Ethics Teaching Positively Affect the Ethical Professional Identity of Trainee Solicitors in Ireland Even at Vocational Training Stage?*

Tony Foley, Vivien Holmes, Stephen Tang & Margie Rowe: *Professional Identity Formation in New Lawyers and the Influence of the Ethical Climate*

Yael Efron: *Law Students as Agents of Social Change – Moral Values and Attitudes in an Israeli Law School*

Quality Control of Professional Conduct (E-7)

Leslie Levin, University of Connecticut School of Law (US) (Moderator); **Tony Foley**, Australian National University (Australia); **Kyoko Ishida**, Waseda University (Japan); **Francesca Bartlett**, University of Queensland (Australia); and **Linda Haller**, University of Melbourne (Australia) “Quality Control” of lawyers’ professional conduct comes mainly from external sources such as professional training, the organizational infrastructure of firms, professional networks, lawyer discipline sanctions, malpractice liability, and malpractice insurance. This panel will draw on empirical research in Australia, Japan and the United States to examine various types of quality controls on lawyer conduct. It will consider, inter alia, how well these quality controls succeed, why they fail, and the incidence of failure in the discipline and malpractice context. The panel will also draw on this research to consider how lawyers might be encouraged and supported to provide more competent service to their clients.

Testing the Paradigm: Regulatory Objectives and Access to Justice in the UK, Canada and the U.S. (E-8)

David Udell, Cardozo School of Law (US) (Moderator); **Judith McMorro**, Boston College Law School (US); **Richard Miller**, Law Society, England and Wales (UK); **Malcolm Mercer**, Law Society of Upper Canada (Canada); and **Ronald Minkoff**, Frankfurt Kurnit Klein & Selz PC (US)

This program will involve presentations by UK and Canadian lawyers who are active in the Regulatory Objectives movement there, as well as two law professors who have studied this issue closely. We will look at whether the use of Regulatory Objectives and ABS structures has helped to alleviate access to justice concerns for poor and middle class clients in the UK and Canada, and analyze those outcomes in the context of the objections raised in the U.S. to Regulatory Objectives/ABS.

The Legal Profession Under an Empirical Lens: Lawyers in Japan, Israel, Canada and India (E-9)

Neta Ziv, Tel Aviv University, The Buchmann Faculty of Law (Israel) (Moderator); **Ronit Dinovitzer**, University of Toronto, Sociology (Canada); **Swetha Ballakrishnen**, NYU (Abu Dhabi); and **Kay-Wah Chan**, Macquarie University, Sydney (Australia)

This panel inquires into empirical aspects of the legal profession in 4 countries: Canada/US, India, Israel and Japan. The Canada/US paper: “Early legal careers in comparative context: evidence from Canada and the United States”, explores early careers by drawing on nationally representative surveys of lawyers’ early careers in Canada and the United States. It examines the sorting of

lawyers in sectors and settings as well as the mechanisms that are key to understanding this process. The paper from India “Same Same But Different | Accidental Feminism and Unintended Parity in India’s Professional Firms”, investigates mechanisms that produce gender hierarchies and identities in Indian law firms, attempting to understand how it came about that in India’s most prestigious law firms, women are one half the population, even at senior levels of the partnership. The paper from Japan: “What Have They Done Wrong? - An Analysis of Disciplinary Actions against Japanese Attorneys: Past and Present”, examines disciplinary proceedings against lawyers in Japan under the country’s new professional regulatory system, and the Israeli paper: “After the LL.B. – An Empirical Study of the Israeli Legal Profession”, attempts to unveil “the picture behind the numbers” of Israel’s soaring legal profession, still the highest rate per capita in the world, and provide information about career patterns and personal makeup of the profession.

The Role of Multidisciplinary Practices (MDPs) in the Globalized Legal Services Industry (E-10)

David Wilkins, Harvard Law School (US); **María José Esteban Ferrer**, ESADE Law School (Spain); **David Fennelly**, Trinity College Dublin (Ireland); and **Matthias Kilian**, University of Cologne (Germany)
Moderator: Jim Varro, Law Society of Upper Canada (Canada)

David Wilkins and María José Esteban Ferrer: *Is the Legal Ethics Sky Falling? The Role of the Big Four in the Global Legal Services Ecosystem*

In the booming legal services market of the late 1990s, the major accounting firms attempted to exploit the natural overlap between “accounting,” “tax,” and “legal” services to build “legal services” networks that would compete with international law firms. Few lawyers openly objected to these multidisciplinary arrangements (MDPs) on the ground that they were a threat to law firms’ profits. Instead, the preferred ground for attack was the assumption that there was “no demand for MDPs,” and particularly the assumption that multidisciplinary arrangements between lawyers and accountants were a threat to the core values of the legal profession. The passage of the Sarbanes Oxley Act of 2002 in the United States favored these assumptions to prevail globally - or so it seemed. In 2015, more than a decade after the legal businesses of the Big Four - PwC, Deloitte, EY, and KPMG - were proclaimed dead by most pundits, their increasingly integrated and expansive legal networks are major players in the global legal services market. Nevertheless, to paraphrase the Australian regulator Steve Marks, there are no reasons to believe that the legal ethics sky is falling. After succinctly describing the assumptions and regulatory reforms that lead to the crisis of the accountants’ “multidisciplinary version” during the period 2002-2003, this paper provides empirical evidence on how the Big Four have characterized their role in the global legal services ecosystem, and reflects on what assumptions against MDPs have been broken as well as on how the legal profession has evolved with regard to these assumptions.

David Fennelly: *Ever the Adversary?: The Legal Services Regulation Act 2015 and the Irish Legal Profession*

The Legal Services Regulation Act (LSRA), enacted by the Irish Parliament in December 2015, represents a watershed in the regulation of legal services in Ireland. Building on a paper presented at ILEC VI, this paper will examine the LSRA from two perspectives.

First, the paper will examine some of the key changes introduced by the LSRA. Driven by Ireland's participation in an EU-IMF Programme of Support, the Act introduces for the first time an external regulator of the legal profession in Ireland, establishes a new disciplinary structure, and makes provision for new structures for the provision of legal services, including MDPs. For the purposes of this presentation, the paper will focus on the new regulatory regime which the LSRA puts in place for the Irish legal profession and will draw on comparative perspectives in so doing.

Secondly, the paper will consider the process by which the LSRA was adopted and, in particular, the approach of the legal profession to this process. Strongly resisted by the legal profession over a number of years, the legislation as finally enacted has been criticized as having been watered down in response to intensive lobbying by lawyers. The paper will consider what lessons might be learnt from the Irish experience and reflect on how the profession should respond to demands for reform. Is the legal profession destined always to be an adversary to such change?

Matthias Kilian: *MDPs - a matter of constitutional law, not just policy: Germany's Constitutional Court opens the door for MDPs*

On January 12, 2016, the German Federal Constitutional Court (Bundesverfassungsgericht) delivered a landmark ruling that will open up the door for Multi-Disciplinary Practices in Germany. The court held that a partnership between an attorney and a health professional must be registered and that any professional rules prohibiting such a partnership were unconstitutional. The court rejected traditional justifications for a prohibition of MDPs, such as the need to protect the independence and the professional secret of attorneys. The paper will analyze the court's well-reasoned ruling and the ramifications it will have on the regulation of attorneys in Germany. It will also present empirical data on the attitude of German attorney towards MDPs.

GLOBALIZATION AND THE LEGAL PROFESSION

Ethics in Strategic Human Rights Litigation: Thorny Issues and Practical Questions (G-1)

Marion Isobel, Open Society Justice Initiative (UK) (Moderator); **Margaret Satterthwaite**, NYU (US); **Masha Lisitsyna**, Open Society Justice Initiative (US); and **Andrés Díaz Fernandez**, Fundar (Mexico)

There are many layers of complexity in strategic human rights litigation. Certain core ethical principles underpin the work of all lawyers, but those principles are expressed in different ways around the world and the detail can differ from jurisdiction to jurisdiction. Because human rights organizations often employ staff from around the world and engage in litigation in a range of forums across multiple jurisdictions, it can be difficult for lawyers to even identify the ethical rules that apply to them.

In addition to the general rules of ethical legal practice that apply to all lawyers, human rights lawyers also must be mindful of challenges and difficult issues of professional discretion that can arise in the particular context of human rights cases. Client care, confidentiality, conflicts of interest, settlements; all of these issues become particularly complex and thorny in the human rights and civil society context.

This panel brings together experienced lawyers and academics to discuss a few of the most interesting and problematic issues that can arise in human rights litigation.

How do human rights lawyers understand their dual roles as representatives of clients and advocates for broader change? What happens when your client's best interests diverge from your own interest in advancing the law in a particular way?

How can you take care of your client when they have complex needs, or are vulnerable, or have suffered torture or trauma? What holistic approaches to client care can you adopt to fulfill your ethical obligations? What support can you offer to your client without running afoul of inducement prohibitions?

The paper associated with this panel is a Practice Note developed by the Open Society Justice Initiative providing practical assistance to human rights practitioners for effective strategic litigation. It includes guidelines on how to identify the ethical rules that apply to you, as well as practical assistance on client care, confidentiality, case management, and examples of how to deal with tensions and conflicts of interest that can occur in strategic litigation. A working draft will be shared with

conference participants in order to gather input and case examples, with a final version planned for publication in early 2017.

Global Expansion of the Lawyer Ethics Course (G-2)

James Moliterno, Washington and Lee University School of Law (US) (Moderator); **Xiaobing Liu**, Law School, China University of Political Science and Law (China); **Jan Mazur**, Comenius University in Bratislava, Faculty of Law (Slovakia); **Maxim Tomoszek**, Palacký University in Olomouc, Faculty of Law (Czech Republic); **Soledad Atienza**, IE University, IE Law School; (Spain); **Dubravka Aksamovic**, Faculty for Law Osijek (Croatia); **Lucia Berdisova**, Trnava University Faculty of Law (Slovakia); and **Rongjie Lan**, Southwestern University of Finance and Economics (China)

On this panel, academics from China, Slovakia, Czech Republic and Spain will describe the establishment of lawyer ethics courses at their law faculties and law schools. The courses share common themes with US and UK courses, but have a broader, more comparative theme as well.

Globalized Legal Profession: Non-Lawyer Ownership and Third Party Investment in Lawyers' Earnings (G-3)

Peter Joy, Washington University School of Law (US) (Moderator); **Adrian Evans**, Monash University Faculty of Law (Australia); **Anthony Sebok**, Cardozo Law School (US); **Louise Hill**, Professor of Law, Delaware Law School of Widener University (US); and **Sundeep Aulakh**, University of Leeds (UK)

Non-lawyer ownership of law firms and third party investment in lawyers' earnings are hotly debated issues in the USA. At the same time, many other countries, including some that share a more or less common law tradition with the USA, permit non-lawyer investment in and ownership of law firms. This contrasts to the vast majority of jurisdictions in the USA in which law firms must be owned by lawyers and in which lawyers may not share fees with non-lawyers. This panel will compare and contrast alternative business structures and litigation funding in the global legal services market. It will also examine the ways USA law firms are obtaining non-lawyer investment in anticipated profits. Panelists will consider the ethical issues associated with non-lawyer ownership of law firms, whether non-lawyer ownership and third party investment in lawyers'

earnings undermine the ethics of firm lawyers, and whether firm structures in jurisdictions that permit non-lawyer ownership and sharing of lawyer fees may soon have an advantage over lawyers in jurisdictions that prohibit such participation by non-lawyers.

International Ethics and Transnational Governance Issues (G-4)

Carrie Menkel-Meadow, University of California, Irvine law School (US); **Mitt Regan**, Georgetown Law Center (US) (Moderator); and **Christian Wolf**, Faculty of Law, Leibniz University Hannover (Germany)

Carrie Menkel-Meadow: *Are International Ethics Possible In Transnational Dispute Resolution-Mediation, Arbitration, Etc.*

I have been working on promulgation of ethical standards and rules in transnational dispute resolution (mediation, arbitration and peace facilitation) for years. My paper would explore whether it is possible to draft trans-systemic ethical principles, rules and enforcement mechanisms. See my review of Catherine Rogers' Ethics in International Arbitration, soon to appear in Geo. J. Leg. Ethics and CMM, Why and How to Study Transnational Law, 1 UC Irvine L. Rev. 97 (2011) and my work as Chair of CPR-Georgetown Commission on Ethics and Standards in ADR for elaboration of issues of legal cultural differences in creating ethics standards with different procedural and substantive traditions in civil, common law and hybrid systems. Will draw on my work in over 20 countries.

Mitt Regan: *Lawyers in the Shadow of the Regulatory State: Transnational Governance on Business and Human Rights*

Most initiatives aimed at increasing business responsibility to respect human rights consist of nonbinding standards that have few formal legal consequences. The business duty to respect human rights generally is expressed in international instruments or voluntary codes of conduct that are legally unenforceable. Furthermore, the rights in question typically are expressed in very broad terms, so that their meaning may vary considerably in different situations. The business duty to respect human rights thus differs from conventional legal obligations on which lawyers typically advise clients. In addition, employees and consultants who focus on corporate social responsibility historically have played the lead role in addressing the social impact of business operations. What, if any, role does this leave for lawyers with respect to the business duty to respect human rights?

Our research suggests that lawyers generally are in the early stages of formulating answers to this question. The legally unenforceable nature of most human rights obligations can make some lawyers reluctant to advise on what they and their clients consider "soft law." Those lawyers more experienced with soft law in other areas are more comfortable elaborating on how

nonbinding public expectations for business clients can affect the perception of their legitimacy. In addition, focusing on potential ancillary legal risks of human rights violations, as well as on broader concerns about enterprise risk, thus far has been especially effective in leading business clients to take human rights issues seriously.

Finally, emphasizing the extent to which other companies in the same industry are sensitive to human rights concerns can lead to greater willingness to address the human rights impacts of a company's operations. The growing attention to business and human rights by public and private actors, as well as by bar associations, presents an opportunity for business lawyers to determine how to incorporate an understanding of public obligations in private practice in the process of constructing a professional identity.

Christian Wolf: *Free Legal Profession vs Ethics in International Arbitration?*

In recent years the devolvement of council behavior in international arbitration has been described as a devolvement from an invisible college of distinguished Gentleman and Ladies to an ethical no-man's land (Rogers). The behavior of some arbitrators has been referred to as guerilla tactics. More cautiously worded, it is not disputable that different ethical standards are applicable in different jurisdictions worldwide. There is still neither a uniform code of ethics nor conflict of law rules in the field of legal ethics. Organizations like the IBA and arbitration institutions like the LCIA tried to fill this gap. Especially the LCIA in the new 2014 Rules empowered the tribunal to sanction arbitrators for their misbehavior (Rule 18.6).

In the 19th Century the German lawyers fought for the freedom of their profession. The demand no longer to be under the disciplinary authority of the court, especially the court hearing the case, was predominant. Firstly, the paper will address the question how the new established disciplinary authority of the tribunal is consistent with the fundamental understanding of a free advocacy as developed in Germany.

Since the Bastille decisions of the German Federal Constitutional Court it is clear that only the legislator has the authority to regulate professional conduct. Secondly, the paper will address, whether it is possible that an arbitration Institute like the LCIA or the IBA enact binding rules of professional conduct.

International Perspectives on the Business/Profession Dichotomy (G-5)

Samuel Levine, Touro Law Center (US) (Moderator); **John Flood**, Griffith University (Australia); **Philip Genty**, Columbia Law School (US); **Nancy Moore**, Boston University Law School (US); **Thomas Morgan**, George Washington University Law School (US); **Russell Pearce**, Fordham Law School (US); **Andrew Pilliar**, PhD Candidate, University of

British Columbia Faculty of Law (Canada); and **Noel Semple**, University of Windsor Faculty of Law (Canada)

The program will explore the business/profession dichotomy in an international perspective, exploring views of the practice of law in the United States and a number of other countries throughout the world.

Lawyer Mobility - A Value or a Threat? (G-6)

Anthony Davis, Lawyers for the Profession(R) practice group at Hinshaw & Culbertson LLP (US) (Moderator); **Caroline Hart**, University of South Queensland (Australia); **Steven Vaughan**, University of Birmingham (UK); **Emily Carroll**, University of Birmingham (UK); **Darrel Pink**, Nova Scotia Barristers' Society (Canada); and **Carol Needham**, Saint Louis University School of Law (US)

Restrictions on the mobility of lawyers impede the ability of clients to engage lawyers of their own choosing, add to the expense of obtaining legal advice and frequently delay the delivery of needed legal services. Jurisdictions vary widely in the degree to which, on the one hand, they encourage, permit or support anti-competitive rules that limit freedom of movement by lawyers as much as possible or, on the other hand, the methods used in other places to support, permit or encourage mobility. This panel will contrast the regulatory regimes in place in Canada, Australia, and the European Union - all of which are at a minimum permissive of mobility - with the state-by-state regulation of lawyers in the United States, which has resulted in the continuation of almost uniform and comprehensive limitations on lawyer mobility. The panel will discuss the relative value of these contrasting policies for clients and for the legal profession.

Steven Vaughan and Emily Carroll: *Transaction Mills? The 'Dirty Work' of Legal Services Onshoring*

Increasing competition for work, law firm expansion via globalization and sophisticated clients seeking 'more for less' from their outside counsel have forced law firms to think about how they manage their work. These drivers have seen, for example, large law firms turn to legal process outsourcing to reduce costs. In the UK, something else is also happening. Global English law firms, who previously only ever had London offices in the UK, have started to open up other 'onshored' UK offices outside of London. Some of these offices undertake business support functions (IT, HR etc.); others employ local lawyers to perform the repetitive, lower profile, less prestigious work that has become unprofitable for London lawyers. These shifts in law firm organization reflect: (i) ongoing changes to the nature of legal work and legal professionalism - a move from a guild like institution to a capitalist service industry; and (ii) speak to wider social changes in the nature of post-recession employment and to the practical substantiation of a two tier, North/South, London/regions divide. We draw on 25 interviews with lawyers drawn from every onshored office currently open in the UK to frame

these changes in the nature of legal work using the sociological phenomenon of 'dirty work'; and ask whether the work done by onshored lawyers is simply that which the London lawyers of the same firm feel is too 'dirty' for them to do. As such, these onshored offices may become (to borrow and adapt a phrase from Nora Engstrom) transaction mills.

Legal Ethics and National Security Crises (G-7)

Brigadier General Mark S. Martins, Office of Military Commissions, U.S. Department of Defense (US); **Karen Greenberg**, Fordham Law School (US); **Joshua L. Dratel**, Law Offices of Joshua L. Dratel, P.C. (US); **Shane Kadidal**, Center for Constitutional Rights (US); and **Peter Margulies**, Roger Williams University School of Law (US) (Moderator)

Since September 11, 2001, the practice of lawyers before emergency tribunals has attracted extraordinary scrutiny. Challenges confront lawyers who represent targets of government investigation, detention, and trial, as well as the lawyers who represent the government. Lawyers who represent individuals ask if mere participation in emergency tribunals gives those proceedings a legitimacy they would otherwise lack. On the other hand, taking that view can impair access to counsel for individuals who need representation. Lawyers in government face a distinct, but similarly formidable, set of challenges. Those lawyers may regard tribunals such as military commissions as a reasonable, well-established response to armed conflict and other crises - consider the International Military Tribunal at Nuremberg after World War II. Government lawyers need to reconcile fairness with adversaries, including respect for attorney-client privilege and other accepted safeguards, with the government's security needs.

The panel will explore these issues in the context of representation of Guantanamo detainees, service as a military prosecutor, challenges to U.S. no-fly lists, and the experience of India and the United Kingdom with emergency tribunals.

The Essence of the Client-Lawyer Relationship (G-8)

Yasutomo Morigiwa, Meiji University (Japan) (Moderator); **Alice Woolley**, University of Calgary School of Law (Canada); **Brad Wendel**, Cornell Law School (US); **David Luban**, Georgetown University Law Center (US); and **Kyoko Ishida**, Waseda University (Japan)

There are several models of the client-lawyer relationship: lawyer as fiduciary, with attendant problems of paternalism; lawyer as gatekeeper, in regulatory contexts; lawyer as friend, a la Charles Fried's article; lawyer as client's political colleague in certain public-interest contexts.

The panel will discuss the (apparent or real) conflict between the first two issues:

- 1) lawyer with fiduciary duty towards client
- 2) lawyer as gatekeeper (and officer of the court)

Can the public duty of the lawyer to uphold the law be explained in terms of fiduciary duty, as being in the client's interest at the end of the day, even when the client doesn't see it that way? If not, what would be the appropriate account?

In the U.S., there are broad areas of agreement on the nature of fiduciary relationships, the lawyer's role, and whether the lawyer's role can properly be characterized as fiduciary. However, even characterizing the professional role as fiduciary is questioned in many parts of the world, i.e., in civil law countries, where thinking in terms of contractual rather than fiduciary duty is considered a moral and theoretical must.

INTERDISCIPLINARY APPROACHES TO THE LEGAL PROFESSION

Comparative Legal Profession Histories (I-1)

Tony Alfieri, University of Miami School of Law (US); **Felice Batlan**, Chicago-Kent College of Law (US); **Gwen Jordon**, University of Illinois (US); **Ann Southworth**, UC Irvine School of Law (US); **Susan Carle**, American University Washington College of Law (US) (Moderator); and **Michael Ariens**, St. Mary's University School of Law (US)

This panel explores the development of the legal profession from an historical perspective, examining a variety of topics and seeking to draw lessons across areas of focus on race, gender, political ideology and more. Some speakers will focus on current research projects on the U.S. legal profession while others will look at the historical development of the legal profession through a comparative lens. The underlying question uniting the panel is: what can historical study reveal about legal profession values and commitments?

Michael Ariens: *The Rise and Fall of Social Trustee Professionalism in Law*

After the “lawyers’ scandal” known as Watergate, elite American lawyers reaffirmed the ideal that the lawyer owed a duty of loyalty both to one’s clients and to the public. This latter duty, called “social trustee” or “public interest” professionalism, was embodied in part in the rules of ethics. In 1977, when the ABA created a special committee, later known as the Kutak Commission, part of its charge was to install social trustee professionalism in what became the Model Rules of Professional Conduct. The Kutak Commission’s initial public draft of the Model Rules was attacked by many lawyer associations as sacrificing the lawyer’s duty of loyalty to the client. This, many argued, was contrary to the fundamental professional duty of the American lawyer. The Kutak Commission retreated, then retreated again, as the debate on adoption of the Model Rules continued until 1983. As adopted, the Model Rules favored a market model of professionalism, largely to the exclusion of social trustee professionalism. A year later, Chief Justice Warren Burger gave a talk decrying a loss of professionalism within the legal profession. This sparked the “professionalism” movement, a three decade effort to restore a kind of social trustee professionalism. This paper examines the history of the American legal profession from 1970-1990, and suggests some lessons from this history may be useful to lawyers today.

Exploring Access to Justice from a Variety of Perspectives (I-2)

Liz Curran, Australian National University (Australia); **Elaine Campbell**, Northumbria University (UK); and **Julian Webb**, Melbourne Law School (Australia)

Moderator: **Elaine Hall**, Northumbria University (UK)

Liz Curran: *Health Justice Partnership - Multi-Disciplinary Practices Research Evidencing Working Ethically To Ensure Reach To Those In Most Need & Improve Outcomes*

This paper will examine the emergence of Health Justice Partnerships (HJP) in Australia and will discuss some action research evaluations that embedded in services from start-up that being undertaken by Dr. Curran. The evaluation research not only measures service effectiveness but also examines and measures positive outcomes and any progress in the social determinants of health as a result of the intervention. As the research is gathered what is emerging is the elements leading to effectiveness for lawyers working in integrated models. Non legal professionals such as allied health and health professionals work with lawyers on site with a focus on problem solving a client/patients often complex and multiple problems. The paper will explore how they have found ways to not just work ethically but building a mutual capacity and an awareness of ethical boundaries as well as ‘work arounds’ that ensure ethical practice but also focus on client outcomes. This has seen a building of understandings of different roles and duties of different professionals, a breaking down of barriers and stereotypes of lawyers and closer co-operation and respect emerging. The paper will flag the types of lawyer and lawyering that are evidently helpful in ensuring multi-disciplinary teams can work together more holistically and systematically to achieve better outcomes for clients and community.

Elaine Campbell and Victoria Murray: *The Role of Clinical Legal Education in a New Age of Austerity: The Ethical Dilemma*

There is a growing deficit in the availability of legal services for the poor. In this new age of austerity, low income people who find themselves in legal difficulty are increasingly unadvised and unrepresented.

Traditionally, clinical legal education programs have focused on the provision of free legal advice to those who cannot afford

to pay for it. Law clinics have been part of a community of pro bono providers that have tried to plug the justice gap. However, in recent years there has been a movement towards clinic for education. Some clinics have concentrated on providing their students with the best possible educational experience, rather than delivering the greatest amount of free advice to the most vulnerable. This means choosing cases carefully, limiting the number of cases, and moving away from (or avoiding) means testing.

Ethically, is it incumbent on law school clinics to fill an ever increasing gap in legal provision for the poor? Or does the fact that law students are paying substantial fees means that it is ethically right to put education first? Would it be wrong to limit students' experiences to the areas that traditionally affect low income clients? Or, morally, do we have a duty to help those in greatest need?

We are two experienced clinicians. We work in the same law school clinic. You would expect us to have the same view on the questions posed above. But we do not. Our paper is a unique opportunity for delegates to hear two clinicians debate the question of whether clinical legal education should be used to fill the void created by cuts to legal aid.

Julian Webb: *The Ethics of the Gift: The Moral Economy of Pro Bono Publico*

This paper seeks to bring a new perspective to the debate about the regulation of pro bono, by framing the practice conceptually within a 'moral economy' of legal professionalism. By tracing the development of norms of 'soft regulation' for pro bono activity in Australia and the UK, the paper argues that pro bono can be best understood as an activity located between the gift and market economies. In conclusion, some implications of this reframing of pro bono for ethics and regulation are considered.

Good T.V., Bad Ethics: Legal Ethics in Contemporary Popular Culture (I-3)

Lucy Jewel, University of Tennessee College of Law (US) (Moderator); **James Milles**, SUNY Buffalo Law School (US); **Nicole Hyland**, Frankfurt Kurnit Klein & Selz, PC (US); **Craig Newbery-Jones**, University of Plymouth Law School (UK); **David Marrani**, Institute of Law, Jersey (British Channel Island); and **Sandrine Chapon**, Grenoble Law School (France)

Legal ethics issues are often woven into the dramatic framework of television shows, science fiction, and other popular narrative forms. Acclaimed shows such as *Breaking Bad*, *Better Call Saul*, *The Good Wife*, *Rake*, and *Fairly Legal* frequently refer to legal ethics issues. Ethics issues can also be found embedded in other pop culture forms, such as science fiction and popular literature. With current popular culture as a backdrop, this program's panelists will address topics including:

Ethics lessons from popular television shows: dos and don'ts
What does popular culture get right in terms of legal ethics and what does it get wrong?
What does popular culture tell us about how laypersons view lawyers and the role of the lawyer in society?
How can law teachers use pop culture to create engaging ethics lessons for law students?

Interdisciplinary and Collaborative Approaches to Addressing Ethical Challenges of Vulnerable Populations: Focus on Foster Care and the Disabled (I-4)

JoNel Newman, University of Miami School of Law (US) (Co-Moderator); **Melissa Swain**, University of Miami School of Law (US); **Andrew Levin**, Columbia University Medical Center (US); **Bernard Perlmutter**, University of Miami School of Law Children & Youth Law Clinic (US); and **Anthony Roberson**, University of Miami School of Nursing and Health Studies (US) (Co-Moderator)

JoNel Newman/Melissa Swain/Andrew Levin: *Ethical Dilemmas in Representing Vulnerable Populations and Coping with Secondary Trauma Exposure*

Specific ethical problems arise in the representation of vulnerable clients and an interdisciplinary approach that incorporates studies and practices from behavioral health and the social sciences can be helpful in addressing these issues. Panelists will discuss how implicit biases can lead to discriminatory behavior and corrupt outcomes in a legal context. Mindfulness and cross-cultural lawyering strategies to counteract the impact of implicit bias will be discussed. In the context of clients who are under a disability, lawyers are often charged with determining for themselves a client's mental capacity, competency and state of mind. Some use psychiatric tools such as the mini mental status exam, despite having no training in these fields. Others presume that the client is competent and that they should zealously advocate for a client's goals even when those legal choices and decisions are contrary to the client's best interests. Still others engage in highly paternalistic lawyering. We will discuss the strategic use of language and client narrative to empower disabled clients. Panelists will also discuss the representation of trauma survivors and how the lawyer's duties of loyalty and confidentiality may be complicated by working with their mental health professionals, and the importance of minimizing the re-victimization of clients. Attorneys must also be prepared for the possibility of vicarious trauma. Attorneys may be particularly vulnerable to secondary trauma because of their long work hours and greater contact with clients with trauma exposure. The presentation will offer suggestions for minimizing the effects of secondary trauma.

Bernard Perlmutter/Anthony Roberson:*Interdisciplinary Academic-Community Collaborations to Achieve Ethic of Care in Dependency-Foster Care Court Proceedings*

This program will highlight the interdisciplinary collaboration for a child welfare conference uniting academics and community agencies to address various ethical challenges and considerations related to the foster care-dependency court system. The conference forum was guided by the principles of Therapeutic Jurisprudence and organized by the University of Miami, School of Law, School of Nursing and Health Studies, and the Miami-Dade Community Based Care Alliance. The disciplines included, but were not limited to law (attorneys and judges), nursing, case management, child service investigation, education (law, nursing, and local school board), and psychology. All sessions were conducted with a high degree of interactivity in an effort to elevate child welfare practice among frontline staff members to the ideals and principles of Therapeutic Jurisprudence. The specific child court topics presented upon included domestic violence, mental health, trauma in child welfare cases, and coordinated community responses in the context of Therapeutic Jurisprudence. Presenters included local community experts from the Department of Children and Families, Dependency Drug Court, Miami-Dade County Coordinated Victim Assistance Center, former Child Welfare Prosecutors, former foster youth, and the University of Miami, among others. We believe that this conference approach could be a model for future collaboration among disciplines to effectively address the many challenges related to foster care-dependency court ethics and improve outcomes for children and families whose lives are affected by the foster care-dependency court system.

Keeping Up Appearances: Legal Dress (I-5)

Eyal Katvan, College of Law and Business (Israel); **Elizabeth Cooper**, Fordham Law School (US); **Maureen Howard**, University of Washington School of Law (US); **Shaeda Isani**, Professor emerita, University Grenoble-Alpes (France); and **Sandrine Chapon**, Grenoble Law School (France)

Moderator: **Matthias Kilian**, University of Cologne (Germany)

Professional dress code is very dominant within media coverage, TV legal dramas, art etc. However, it is less so in academic research. Professional dress codes (and court dress in particular), are regulated within social norms, ethical rules or court rules, but their meanings, rationales and consequences are neglected. In these sessions, we intend to initiate a new platform, a research group, to discuss the various aspects of professional dress codes and professional appearance. Historical, empirical, semiotic, literature and practical aspects will enable us to know more, and to understand better the rationales and consequences of professional (legal) dress codes and appearance.

Lawyers, Responsibility to Others, and Moral Conversations (I-6)

Neil Hamilton, University of St. Thomas (US); **Tony Foley**, Australian National University (Australia); and **Stephen Pepper**, University of Denver, Sturm College of Law (US)

Moderator: **Vivien Holmes**, Australian National University College of Law (Australia)

This program will investigate lawyers' responsibility to others with specific emphasis on the responsibility to engage in moral conversations with clients and colleagues, including in relation to child sexual abuse cases. In particular, participants will discuss:

The behavior of the lawyers acting for the Australian Catholic Church in defending actions brought by victims of sexual abuse. This behavior has come under recent scrutiny by the Australian Royal Commission into Institutional Child Sexual Abuse.

How a lawyer/client relationship that explicitly engages clients in moral conversations might impact upon the behavior of a faith-based institutional client or a corporate client.

The problem of the corporation as client and "amoral ethics" squared: (1) the lawyer's ethic of providing access to and assistance in using the law, even for morally wrongful conduct, combining with (2) the corporate executive's ethic of serving primarily shareholder value or profit, frequently excluding (or not perceiving) other possible values or moral concerns.

The importance of an ethic of responsibility to others in legal practice. How we might help law students internalize this responsibility, including preparing them to engage in conversations with people of different traditions about responsibility to others.

Recent Developments and Future Directions in the Study of Behavioral Legal Ethics (I-7)

Catherine Gage O'Grady, University of Arizona James E. Rogers College of Law (US); **Jane Moriarty**, Duquesne University School of Law (US); and **Molly Wilson**, PhD, St. Louis University School of Law (US)

Moderator: **Alice Woolley**, University of Calgary School of Law (Canada)

This will explore recent developments and future directions in the study of behavioral legal ethics and its application to the professional practice of law. Panelists will discuss how unconscious biases, self-deception, and situational dynamics impact lawyers' ethical decision making, behavior, and professional identity. In addition, the panel will explore the unique ways that behavioral legal ethics principles impact new lawyers, examine the way ethical cultures and infrastructures differ between different legal practice settings and different jurisdictions, and suggest how insights from behavioral science can be harnessed to promote ethical professionalism in a wide variety of practice settings.

RULE OF LAW AND THE LEGAL PROFESSION

Access to Justice: Is More Access Enough? (L-1)

Scott Cummings, UCLA School of Law (US); **David Luban**, Georgetown University Law Center (US); **Rebecca Roiphe**, New York Law School (US); and **Melissa Mortazavi**, University of Oklahoma School of Law (US) (Moderator)

This roundtable discussion examines how access to law is conceptually situated and asks the question: is more access enough? Specifically, access to law is often thought of in terms of increasing access to legal services and legal institutions for the poor and legally disenfranchised. However it is unclear, particularly in an adversary system, whether increasing access alone can alleviate or address the structural inequity that arises when adversaries are unequally matched in terms of expertise, resources, and even legal savvy. This panel will discuss whether the goal of more access can address the underlying issue of a lack of fair protection and adjudication under the law. Can the issue meaningfully be framed as increasing access to law for the poor? Or, ultimately, is this framing debilitating truncated? Is the true issue not more access, but how to have equal access for members of our civil society? Speakers include scholars who approach these questions from a variety of methodological backgrounds and experience. Topics to be covered include 1) the theoretical difference between increased and equal access and interrogating the gap between those two concepts 2) historical perspectives on when and how the equality aspect of the access of justice movement may have been more or less prevalent 3) alternative conceptions of how to attain equal access to law that include, but are not limited to, decreasing access to those who currently have disproportionate access.

Building Defense Bar Capacity to Ensure Equality of Arms (L-2)

Olga Churakova, Advocates' Training Center (The Kyrgyz Republic); **Elizabeth Givens**, ABA Rule of Law Initiative Balkans Regional Rule of Law Network (Macedonia); **Jennifer Smith**, International Legal Foundation (US); and **Fabio de sa e Silva**, Institute for Applied Economic Research (Brazil)

Moderator: **Susan Carle**, American University Washington College of Law (US)

Equality of arms is a fundamental principle of modern criminal justice systems, and is essential to protect the human right to due process and a fair trial. However, very often donor and governmental resources are dedicated to the training of judges

and prosecutors, while defense lawyers are left behind, unfamiliar with legal reforms and lacking the skills needed to effectively represent their clients. Bar associations, NGOs, and law firms have increasingly taken on responsibility for the professional development of defense lawyers. This panel will discuss the need for building defense bar capacity in order to protect defendants' rights and highlight several successful models for the professional development of defense lawyers in various parts of the world.

Comparative Study on Legal Education and Ethics in Two Islamic Neighbor Countries: Current Situation and Future Perspectives

Building Legal Institutions: Lawyers and Judges (L -3)

James Moliterno, Washington and Lee University School of Law (US) (Moderator); **Pavol Zilincik**, Rule of Law and Judicial Reform Consultant (Slovakia); **Irakli Kordzakhia**, Law Firm Kordzakhia Jgenti GP (Georgia); **Irina Lortkipanidze**, East West Management Institute (Georgia); **Marjan Arsovski**, University "St. Kliment Ohridski" Skopje (Republic of Macedonia)

This panel will feature reform participants from Slovakia and Republic of Georgia. The Georgians will describe reforms to the bar association disciplinary system and ethics training systems that have lifted the system from inception to sophisticated efficiency. The Slovak participants will describe the ongoing efforts of the US Embassy and various NGOs to reform the code of conduct for judges and establish fair systems for disciplining judges, selecting new judges, and administering the judiciary.

In addition, Marjan Arsovski will discuss international rule of law missions in Kosovo, Georgia, Ukraine, Bosnia and Hercegovina as a guide for rule of law missions in Syria.

Rule of law is a legal maxim which suggests that governmental decisions should be made by applying known principles, as the ancient philosopher Aristotle wrote: "Law should govern." The rule of law is the foundation of a civilized society. It creates a transparent process that is accessible and equal to all. It ensures adherence to principles that both liberate and protect. However, there is a huge gap between the rule of law in theory and reality. When a country is under attack or war is declared, there can be a temporary disabling of normal constitutional functioning, including the executive, legislative and judicial powers. Rule of law is the legal and political framework under which the State - including all institutions and persons - is accountable. Establishing

respect for the rule of law is fundamental to achieving a durable peace in the aftermath of conflict. Upholding the rule of law is essential to successful peacekeeping. It requires strengthening confidence in police, justice systems and correctional services. International rule of law operations consist of military, police and civilian personnel, who work to deliver security, promote human rights and assist in restoring the rule of law. The ongoing International Rule of Law Mission in Kosovo, Border Assistance Mission to Ukraine, Monitoring Mission in Georgia and Rule of Law Mission in Bosnia and Herzegovina provide an opportunity to test the establishment of rule of law in crisis states like Syria. They were established for monitoring, mentoring and advising the countries' police and administration, thus helping to fight organized crime as well as promoting democratic standards. This research paper aims to show the positive and negative experiences of the International Rule of Law Mission in Kosovo, Border Assistance Mission to Ukraine, Monitoring Mission in Georgia and the Missions in Bosnia and Herzegovina, in order to guide future developments and improvements in conducting rule of law missions in Syria.

Comparative Study on Legal Education and Ethics in Two Islamic Neighbor Countries: Current Situation and Future Perspectives (L-4)

Zoha Savadkouhifar, University of Tehran, Shaheed Zulfikar Ali Bhutto University of Law (Iran) (Co-Moderator); **Muhammad Sarfaraz Ali Metlo**, Qaisar & Metlo Law Chambers (Pakistan) (Co-Moderator); and **Sayed Masood Noori**, Trinity University Center for International Engagement (US)

Iran and Pakistan are among the four countries that are called "Islamic Republics" in their Constitutions. Therefore, Islamic rules are points of connection between them. However, their legal systems differ, and they have different codes of conduct for judges and different regulation of judges and lawyers. In this program, the panelists will begin by describing the current state of judicial and legal ethics in Iran and Pakistan, based on the rules, education system of law students, and their own experiences. They will then discuss challenges and opportunities ahead, and suggest guidelines and solutions, to promote ethical practice of judges and lawyers toward the end of promoting the rule of law in both countries. Finally, the panelists will invite questions, feedback and suggestions from attendees in light of the experience in their own judicial and legal systems.

Discrimination and the Practice of Law (L-5)

Alberto Bernabe, The John Marshall Law School (US) (Moderator); **Jessie Allen**, University of Pittsburgh School of Law (US); **Michal Ofer Tsfoni**, Netanya Academic College (Israel); **Lillian Corbin**, University of New England (Australia); and **Paula Baron**, La Trobe University (Australia)

The leadership of the American Bar Association is currently debating whether to adopt an amendment to its Model Rules of Professional Responsibility to address bias and discrimination within the practice of law. Manifestations of prejudice, implicit bias and discrimination are always a cause for concern. However, although well intentioned, the new rule could be viewed as an attempt to impose a particular value on all lawyers. For this reason, some have expressed concern over whether such a rule could be interpreted to interfere with the right, protected by the First Amendment to the US Constitution, to express personal views. In addition, it can be argued that under certain circumstances lawyers should have the right to discriminate when it comes to choosing whether to represent a client, and that it might actually be better for clients if they do.

This panel will look at issues related to discrimination within the practice of the profession. Among other questions, the panel will discuss whether bias, discrimination and civility are forms of conduct that can, or should, be the subject of possible professional regulation, whether lawyers have the right to discriminate when choosing clients, whether expression of bias and prejudice are relevant in determining who can be admitted to the profession and whether it is valid for the state to determine which values to impose on its members.

Judicial Ethics from Around the World: Roles, Responsibilities and Unique Challenges (L-6)

Nadire Özdemir, Ankara University Faculty of Law (Turkey); **Olena Ovcharenko**, National Law University (Ukraine) (Moderator); **Grzegorz Skrobotowicz**, John Paul II Catholic University of Lublin (Poland); and **Anna Ruchala**, John Paul II Catholic University of Lublin (Poland)

Nadire Özdemir: *Care Ethics and Family Court Judges*

Family courts are specialized institutions that centralize on legal issues related to family. It is claimed that beside their judicial roles as solving legal problems, modern family courts also have rehabilitative roles with respect to caring family members' problems and trying to help them. This second role leads us to think more about family court judges' obligations. In this regard, the ethics of care is a significant approach in consideration of the family court judges' legal responsibilities.

In this paper, I will first discuss family courts in general and then the family courts and judges of Turkey in particular. Finally, I will discuss the role of family court judges and their responsibilities in light of the ethics of care.

Olena Ovcharenko: *European Standards of Judicial Ethics and Ukrainian Experience: Challenges and Perspectives*

The rules of judicial ethics, developed and approved by the judicial community, contain important references for professional and day-to-day conduct of judges. Complying with ethical requirements is an essential duty of a judge that derives from his constitutional and legal status. Judicial ethics, based on universal moral imperatives, are efficient internal corporate mechanism to ensure judicial accountability to the civil society. Sources, incorporating ethical standards of judicial profession, are classified by criteria of their legal force: (a) constitutional rules that regulate the legal status of judges, (b) laws that determine the duties of a judge, and (c) acts of the judicial community that approve the Code of Judicial Ethics. International legal standards of judicial ethics, including the Bangalore Principles of Judicial Conduct (adopted by resolution No. 2006/23 on July 27, 2006 of the Economic and Social Council of the United Nations), play an important role in the process of bringing the judges under responsibility.

Violation of judicial ethical rules serves as a basis for the legal responsibility of a judge, if it is accompanied with violation of procedural law or judicial duties. The Higher Qualification Commission of Judges of Ukraine and the High Council of Justice assess unlawful actions or inactions of a judge, including orientation of his intent and the consequences that come as a result. The initial criterion for imposing sanctions on a judge should be the result of his misconduct, including violations of rights and fundamental freedoms of persons who were participants in the proceedings.

Grzegorz Skrobotowicz and Anna Ruchala: *Interviews with Judges of the Supreme Court in Poland*

Ethical dilemmas are part of every person's life. In view of a chosen career path, they can have a greater or smaller significance. In that case, is the position of a judge, a person who decides on the subsequent fortunes of another person, sometimes even until the end of that person's life, particularly prone to ethical dilemmas? Is there a universal method of dealing with ethical quandaries that the judge uses while passing a sentence? How often does it happen that the judge doesn't fully agree with the rule of the law and believes that the natural law is more appropriate? These questions, among others, are the topic of interviews conducted by the panelists with Judges of the Supreme Court in Poland.

Lecturers are going to discuss whether the longstanding experience in the judiciary, rulings in various instances, or a transition from another branch of the juridical profession influences the

way of perceiving such moral dilemmas. What is more, have the motives of taking advantage of the conscience clause or the Radbrucian formula shifted across the years, especially in face of the political changes that occurred in Poland at the close of the twentieth century.

Lawyers in an Authoritarian Regime: A Case Study of China (L-7)

Rongie Lan, Southwest University of Finance and Economics (China); **Sida Liu**, University of Toronto (Canada) (Moderator); **Shenjian Xu**, East China University of Political Science and Law (China); **Ding Xiangshun**, Renmin University School of Law (China); **Judith McMorro**, Boston College Law School (US); and **Xiaochen Zhang**, PhD candidate, Zhejiang University of Finance and Economics (China)

China is a fascinating example of an authoritarian regime developing rule of law to support a socialist market economy. Legal professionals are an important part of the rule of law development. This panel will explore a range of opportunities and challenges facing the quickly growing Chinese legal profession, including challenging state interests in court, state regulatory goals when regulating lawyers, creating a pro bono culture and crafting an effective system of legal education to meet the complex needs of new entrants into law.

Rongie Lan: *With Bended Knees or Straight Legs: How Far Should the New-Breed Chinese Die-Hard Lawyer Go in Challenging the Court?*

Judith McMorro & Sida Liu: *Lawyer Discipline in Zhejiang Province, China: Exploring Regulatory Goals*

Shenjian Xu: *The Challenges and Opportunities in Creating a Pro Bono Culture in China*

Ding Xiangshun: *The Challenges and Opportunities in Creating an Effective System of Legal Education in China*

Xiaochen Zhang: *The Role of Lawyers in China's Corporate Governance*

Synergizing Legal Ethics, Pro Bono, Justice Education and Legal Aid to Achieve Greater Access to Justice (L-8)

Bruce Lasky, Bridges Across Borders Southeast Asia (BABSEA) Community Legal Education (CLE) Initiative (Thailand) (Moderator); **Suphamat Phonphra**, BABSEA CLE (Thailand); **Nattakan Chompuhong**, BABSEA CLE (Thailand); **Naw Hsar Moo Paw**, BABSEA CLE (Myanmar); and **Wendy Morrish**, BABSEA CLE (Thailand)

The program will provide an overview of the current legal ethics, pro bono, justice education, legal education and legal aid movements in the Asia region that are working in synergy to better achieve access to justice and rule of law. The program will focus on ways and means this collaboration began, is currently existing and future steps. There will be a focus on successes, challenges and ways challenges have been overcome as well as ways and means to potentially replicate this movement in other regions and globally.

PHILOSOPHY AND LEGAL ETHICS

Philosophical Legal Ethics from Multiple Perspectives (P-1)

Amy Salyzyn, University of Ottawa Faculty of Law (Canada) (Moderator); **Tim Dare**, University of Auckland (New Zealand); **Emanuel Tucsá**, PhD, Osgoode Hall Law School, York University (Canada); and **Gregory Cooper**, Washington and Lee University (US)

Amy Salyzyn: *Fidelity to Plans?*

In 2011, Yale Law Professor Scott Shapiro published *Legality*, a 400-page text outlining his Planning Theory of Law. Among legal philosophers, the book received considerable attention. In his review, Jeremy Waldron, for example, characterized *Legality* as “rich and vibrant with jurisprudential ambition.” Frederick Schauer and Brian Bix were similarly laudatory, concluding, respectively, that the text represented “a work of ensuring significance” and was “an undoubtedly important contribution to the jurisprudential literature.” To be sure, *Legality* was not universally praised. John Gardener and Timothy Macklem, for example, concluded that the book was “a work that tries too hard to make a major breakthrough to serve as a reliable guide.” Regardless of various reviewers’ ultimate assessments, however, it is clear that Shapiro’s book got people in the world of jurisprudential theory talking.

Given the noted “jurisprudential turn” in legal ethics scholarship, it is somewhat striking that *Legality* has received such little attention among those interested in legal ethics theory. The goal of this article is to outline how Shapiro’s Planning Theory of Law might interact with and have implications for legal ethics theory.

Tim Dare: *Legal Ethics and Post Neo-Aristotelian Virtue Ethics*

In the early years of its current renaissance virtue ethics remained fairly true to its Aristotelian origins. Virtue ethics as defended by influential philosophers such as Julia Annas, Rosalind Hursthouse, John McDowell, and Martha Nussbaum is neo-Aristotelian. Many scholars have thought that virtue ethics is especially apt for legal ethics. The virtue ethics they have had in mind has been almost exclusively neo-Aristotelian. Recently however, ‘post neo-Aristotelian’ versions of virtue ethics have been developed by, for instance, Michael Slote (agent-centered virtue ethics) and Christine Swanton (target-centered virtue ethics). I will talk about why legal ethics scholars have been attracted to virtue ethics and present and assess the significance of these new forms of virtue ethics for legal ethics.

Gregory Cooper: *The Moral Character of the Lawyer’s Role*

Can the role obligations of the lawyer override her ordinary moral obligations, and if so under what circumstances? This question is at the core of philosophical legal ethics, not just in terms of being fundamental but also in terms of the extent to which it pervades the conversation. Recent works by Brad Wendel and Tim Dare have argued that in all but the most extreme circumstances the answer is affirmative. However, their arguments in support of this claim rely not on philosophical theories about the nature of role obligations – something in short supply – but instead on arguments grounded in political morality. I will explore the relevance of two theories which have not, to my knowledge, been incorporated into the debate. Both theories are attempts to assess the ethical status of role obligations generally and my aim is to see what they have to say about the role obligations of lawyers in particular. The first theory is a practice-based approach developed by Alastair McIntyre and the second is a conventionalist theory of role obligations developed by Erin Taylor.

Emanuel Tucsá: *An Epistemology for Legal Ethics – The Need for Intellectually Virtuous Lawyers*

Ethicists sometimes make a distinction between self-regarding ethical virtues and other-regarding ethical virtues, i.e. ethical dispositions that primarily benefit oneself (e.g. prudence) or primarily benefit others (e.g. generosity) in terms of some ethical value. This distinction has been taken up within epistemology and used to develop theories of knowledge that include intellectual virtues that are self-regarding and intellectual virtues that are other-regarding, i.e. intellectual dispositions that primarily benefit oneself (e.g. perceptiveness and intellectual courage) or primarily benefit others (e.g. honesty and integrity) in terms of intellectual flourishing and the acquisition of knowledge.

I argue that this project of applying these ideas from virtue theory to epistemology can also provide insight into the functions of legal systems and the roles of lawyers. Models of lawyering (traditional and alternative) incorporate both self-regarding and other-regarding virtues. However, these models would support virtue development (ethical and intellectual) in ways that emphasize virtue orientations differently when it comes to the roles and tasks that lawyers perform.

My focus is on the relevance that intellectual virtues and their orientations have for the practice and ethics of lawyering. A benefit of discussing intellectual virtues in relation to legal ethics is that the idea of intellectual virtue enriches our understanding of the lawyer’s knowledge producing role. Additionally, this research provides an ethically robust account of the “good lawyer” in a way that leverages

the technical sense of the term “good lawyer”. The arguments in this paper are illustrated through a consideration of document discovery and witness testimony.

Philosophy and Legal Ethics: Ideals, Dilemmas and Dualism (P-2)

Joshua Davis, University of San Francisco School of Law (US) (Moderator); **Pawel Skuczynski**, University of Warsaw (Poland); **Robert Atkinson**, Florida State University College of Law (US); and **Anusha Devi H**, School of Law, Christ University (India)

Joshua Davis: *Legal Dualism and Legal Ethics*

My Article argues that there is an important relationship between the nature of law and legal ethics. A crucial claim in support of this thesis is that the nature of law varies with the purpose for which it is being interpreted. In particular, the Article contends that natural law provides the best account of the nature of law when an interpreter seeks moral guidance from the law, and legal positivism provides the best account when an interpreter seeks instead to describe the law or to predict how others will interpret it. This philosophical position it labels “legal dualism.” Legal dualism has a significant implication for legal ethics: to the extent the law serves as a source of moral guidance for attorneys, they must act as natural lawyers. The Article tests legal dualism—and its corollary for legal ethics—against Bradley Wendel’s justly lauded book, *Lawyers and Fidelity to Law*. Wendel pairs legal positivism and the moral legitimacy of law, commitments that legal dualism suggests are incompatible. The Article argues that, while Wendel makes many important contributions, his argument is not fully successful to the extent it conflicts with legal dualism. It concludes that he—and others—should acknowledge and address the need for ethical attorneys to act as natural lawyers. That means lawyers sometimes must make moral judgments in saying what the law is. A draft of the article is available.

Pawel Skuczynski: *The Concept of Dilemma in Legal Ethics Education*

In ethics the concept of dilemma has a specific meaning. It encompasses situations of conflict of duties or obligations, in which the choice of one conduct necessarily involves the impossibility of different conduct and thus leads to inflicting a specific evil, and the choice of one conduct is necessary. Therefore, the situation of dilemma always involves the problem of the evil caused out of necessity and moral responsibility for it, so the problem of “dirty hands”.

However, in legal ethics education this term is understood rather intuitively as a collective category for different kinds of situations, e.g. when it is necessary to make the choice subjectively perceived as difficult, conflicts of disproportionate values, conflicts of roles and duties, as well as conflicts of conscience.

Furthermore, it is not clear what kind of dilemma is in question. Firstly, they may be rooted in the professional roles, i.e. be specific, for example, for the profession of judge or advocate. Secondly, dilemmas may have their source in the specificity of each branch of law and have a nature of merely ethical problems of law. Thirdly, dilemmas may have their source in such solutions adopted in particular branches of law that modify the performed professional roles and therefore constitute not only an ethical issue of the law itself, but also of the professional ethics.

The aim of the paper is to analyze those differences and discuss if they can be explained by reference to particularities of common law and civil law legal cultures.

Robert Atkinson: *The Curious Fate of Atticus Finch*

For many American lawyers, particularly those who came of age in the civil rights era, Atticus Finch, the single-parent, county-seat lawyer of Harper Lee’s 1960 novel *To Kill a Mockingbird*, has been a continuing inspiration. He not only defended a Black man falsely accused of rape by a white woman in Depression-era rural Alabama; he also struggled all the while to save his young son and daughter from both the pervasive racism of their hometown and an all-too-easy hatred of their racist white townsfolk. For a growing chorus of scholars, however, Atticus’s approach to racial injustice has seemed “too little, too late,” at best no better than the Brown court’s “with all deliberate speed.” Two recent events have re-opened that debate: the publication last summer of Harper Lee’s second novel, *Go Set a Watchman*, and her death earlier this year. Against that background, this presentation will re-consider Atticus’s legacy as a lawyerly role model.

Anusha Devi H: *Identifying Philosophy and Objective Ethics in Law for Pursuing a Harmonious Global Society*

It is fair to say that philosophy is the underpinning of every law and retaining ethics in the society is the prime tenacity of law. However there is continually a lack of clarity on what is ethical and what isn’t due to the subjectivity of understanding the term ethics. The paper aims to identify certain significant philosophical notions embedded in law and the understanding of what ethics is through four avenues. First, it brings about a relation between J.S. Mill’s harm principle and principles of natural law with regard to radical freedom and existentialism thereby discouraging restrictions on the individual, imposed by any law. Second, it draws a connection between Kant’s ideas and current scenario of laws framed. Third, it identifies what ethics truly is by way of noting actions, pleasure, pain and punishment through consequentialism. Fourth, the paper aims to bring about a remedy through ethics and philosophy for the various conflict of ideas in law witnessed in the global world thereby proposing an ideal society.

Relational Perspectives on Ethics and the Legal Profession (P-3)

Russell Pearce, Fordham Law School (US) (Moderator); **David Wilkins**, Harvard Law School (US); **Hilary Sommerlad**, University of Birmingham Law School (UK); **Deborah Cantrell**, University of Colorado (US); **Swethaa Ballakrishnen**, NYU (Abu Dhabi); **Nourit Zimerman**, Bar Ilan University School of Law (Israel); and **Eli Wald**, University of Denver Law School (US)

This panel will introduce – or reintroduce – the application of relational ethics to consider how clients’ and lawyers’ conduct impacts neighbors, colleagues, and the community. Many legal scholars have recently joined researchers from various disciplines, including neuroscience, political science and economics, in exploring relational perspectives on ethics. Relational perspectives argue that prevailing legal ethics paradigms, such as the dominant conception of the neutral partisan or professionalism proposals grounded in individualist conceptions of moral development; and legal profession scholarship, such as articles announcing the death of big law, wrongly rely on an inaccurate — and normatively inappropriate — understanding that lawyers and clients behave as atomistic individuals. The panelists, from a variety of international and multidisciplinary perspectives, will describe how relational perspectives make a significant difference in how we understand, regulate, and promote ethical conduct in the legal profession.

Rhetoric, Perception and Ethical Norms (P-4)

Iris van Domselaar, Amsterdam Centre for the Legal Professions (Netherlands) (Moderator); **Paolo Moro**, University of Padova (Italy); **Massimo La Torre**, University of Catanzaro (Italy); and **Benjamin C. Zipursky**, Fordham University School of Law (US)

Iris van Domselaar: *The Perceptive Judge*

Up until today the way judges perceive has received little attention in legal discourse. Adjudication is most often conceptualized as a practice in which judges apply rules and principles. The focus has predominantly been on the actual decisions judges take, the underlying justificatory rules and principles and the meaning of the decision for the legal system. The selection, determination and valuation of the facts of the case are tacitly considered unproblematic.

This paper by contrast puts judicial perception at the centre of adjudication. It offers a philosophical account of judicial perception that understands it as a special ethical - and thus character dependent - skill that a judge needs in order to adequately cope with the case he is confronted with. It proceeds as follows. First, I briefly touch upon the question why judicial perception has received little attention in legal discourse and how this is, at least on the conceptual level, related to dominant philosophical

premises in practical philosophy. Next, the central features of judicial perception will be discussed and subsequently the question will be addressed how we can account for substantive and legal bearing of judicial perception. We shall see that in this regard ‘thick (legal) concepts’ play a vital role. In addition, I will briefly discuss the role that explicit rules and principles have in an account of adjudication that gives a prominent place to judicial perception. Throughout the text McEwan’s novel *The Children Act* is used as illustrative source.

Paolo Moro: *Rhetoric and Fair Play: At the Origins of Legal Ethics*

According to every own code of legal ethics, lawyers’ first duty is to act upon diligence and fairness in relations with judge, clients and colleagues, and ethical prescriptions appear to be all ascribable to these guidelines.

Greek philosophy hands down that rhetoric is the best method to combat the “battle of words” (logomachia) and to argue faithfully in a judicial controversy: Aristotle remembers, indeed, that it’s necessarily show themselves in a certain appearance, “because rhetoric exists in order to a judgment”.

In Latin literature, Quintilianus says that rhetor is vir bonus dicendi peritus, suggesting that lawyer is surely a man good at eloquence (dicendi peritus), but above all he’s a man of honor (bonus).

Assuming that ‘speaking well’ is ‘behaving well’, the morality of legal rhetoric concerns the aim of fair trial, that imposes at parts and judge a cooperation in the discussion of controversy and compels all the participants to find in the dialogue a common point of view in the dispute by persuasive reasoning and good arguments.

Therefore, the following paper will explain that the real principle of legal ethics is “fair play”, a performative rule based essentially on sportsmanship and competitive spirit.

In fact, in Ancient Greece, that was the homeland of rhetoric, there was a close analogy between sporting competition and adversary trial: agonistic contest and legal proceeding were called by the same name of agòn by the ancient Greeks, first guardians of the Olympic Games, disputed under divine protection of Zeus, judge of all conflicts.

The trial and the game belong to a common universe in which the opposition is an indispensable instrument of the way to achieve victory, through the same competitive aspects: the court and the parties as a referee and players of a dispute; the subpoena as a challenge; the discussion among the contenders as a duel; the appeal as revenge; the decision as a final result of the race.

In the contemporary era, fair play and spirit of sportsmanship are reported in the oath pronounced by representatives of athletes, judges and coaches at the modern Olympic Games;

likewise, dignity or integrity are often mentioned in the attorney oath of new lawyers.

Nowadays, employing fair play with clients, colleagues and judge, rhetoric can be used ethically by lawyers such as respectful athletes: a flawless argument will fail if the audience does not trust speaker or writer and it helps avoid extreme position or loser reasoning.

Massimo La Torre: *Lawyers' Ethics and Legal Positivism*

In my paper I intend to discuss the relationship between legal positivism, the predominant legal theory among lawyers and law schools, and lawyers' ethics. My contention is that legal positivism is hostile to lawyers' ethics and tends to expel it from the precinct of law. This is done either by silence, by not admitting advocates among the relevant actors in a picture of the concept of law, or by making of positive law an ethics in itself. If we consider for instance the two most influential doctrines of legal positivism in the last decades, the one proposed by Hans Kelsen and the one presented by Herber Hart, we should conclude that a system of law could be explained without taking into account what practicing lawyers, I mean attorneys, barristers or solicitors, actually do. Only legislators or judges are considered as relevant, and it is so because both legislators and judges DECIDE and PRESCRIBE, while a barrister does not decide nor prescribe anything in the form of an enforceable positive rule. Now, legal positivism sees law as a social fact, that is basically as a matter or outcome of decisions and prescriptions; is indeed often incline to decisionism. But advocates helas are not decisionist figures. Nor do they issue commands or prescriptions. Therefore, once adopted a prescriptivist view of law, they are not included in the discussion about what makes, defines, the concept and the practice of law. On the other side legal positivism, though strongly separating law and morality, makes of law an "exclusionary" reason for action, indeed a supreme reason for acting within a certain practice. In this way legal ethics is reinterpreted, under various forms and through different fundamental references (e.g. the rule of law principle or the appeal to democracy), as the ethics of abiding by the law. Legal ethics will thus be all that positive law allows lawyers to do and nothing more. In this way, however, the very question of a specific and independent lawyer' ethics is begged.

Benjamin C. Zipursky: *Counselors, Litigators, and Judges: Three Perspectives in Legal Interpretation*

Several Twentieth Century theories of truth in the pragmatist tradition are philosophically modest, in the sense that they do not conceive of some domain of reality that true statements must match. Rather – like Holmes' famous marketplace of ideas – the truth is simply what rises to the top in a vigorous competition of ideas. Ronald Dworkin's celebrated jurisprudential work *Law's Empire* can be understood in this manner, when we think of appellate litigation and judicial discourse as a competition of ideas: the true or right answer in law is simply what we are aiming for

when we are engaged in a good-faith effort to provide the most comprehensive and compelling interpretation of legal materials. The central goal of this paper is to draw out the implications of the Dworkinian view when the legal interpreter is a lawyer who has duties to his or her client, and may be inclined to aim for the answer that is best for his or her client.

The Problem of the "Heroic" Model of the Ethical Lawyer (P-5)

Alice Woolley, University of Calgary (Canada); **Tim Dare**, University of Auckland (New Zealand); **Abbe Smith**, Georgetown University School of Law (US); **Clark Cunningham**, Georgia State University College of Law (US); and **Kim Economides**, Flinders Law School (Australia)

Moderator: **Gregory Cooper**, Washington and Lee University (US)

Debate and discussion in legal ethics often relies on a model or conception of the ethical lawyer - an identification of the traits or qualities possessed by the "good lawyer." Frequently those models invoke an ideal of lawyer heroism - of the good lawyer as the lawyer who transcends ordinary standards of behavior. This panel explores and questions the invocation of the heroic lawyer, considering whether heroic models are useful or beneficial and, even if they are, whether the traditional heroic models of the ethical lawyer are the right ones.

REGULATION OF THE LEGAL PROFESSION AND JUDICIARY

Aggregate Litigation Ethics (R-1)

Morris Ratner, UC Hastings College of the Law (US); **Catherine Piché**, Université de Montréal (Canada); **Stefaan Voet**, Institute for Procedural Law at the University of Leuven (Belgium); **Vicki Wayne**, Law School, University of South Australia (Australia); **Carrie Menkel-Meadow**, University of California Irvine Law School (US) (Moderator); and **Lynn Baker**, University of Texas School of Law (US)

This program addresses ethics challenges that commonly arise in aggregate litigation, including class actions. The program defines “ethics” broadly to include all law governing counsel in such proceedings, including, for example, both professional and procedural rules. Representing the perspectives of multiple countries and legal systems, the panelists will explore, among other topics, the management of conflicts at the front end of aggregate litigation, when counsel are appointed to leadership roles by a court, and at the back end, when mass litigation is resolved by settlement or judgment, and claims distributions are made and administered, and cy pres funds are allocated to third party entities. It will also address complications that arise when the “client” is an organization or association, e.g., in European-style class actions.

Approaching Free Speech and Lawyer Regulation (R-2)

Margaret Tarkington, Indiana University McKinney School of Law (US) (Moderator); **Renee Newman Knake**, Michigan State University College of Law (US); **Jan L. Jacobowitz**, University of Miami School of Law (US); **Alex Long**, University of Tennessee College of Law (US); **Allan Hutchinson**, Osgoode Hall Law School, York University (Canada); and **Greg Beck**, Greg Beck Law Office (US)

There are numerous contexts in which regulations on attorney and judicial speech seem at odds with established doctrines of the First Amendment of the United States Constitution. Similarly, in other countries, lawyer regulations may be at odds with free speech principles and related rights. Courts and commentators continue to provide widely conflicting views about the appropriate recognition and scope of attorney free speech rights—especially in contexts where the lawyer is engaged in law practice and thus is viewed as an “officer of the court.” What are the extent of an attorney’s free speech rights, if any, in the face of regulations related to the attorney’s practice and profession? Do

lawyers have free speech and associated rights as to regulations concerning advising and associating with clients, confidentiality, pretrial and post-trial publicity, civility, or judicial campaign speech? Can the recognition of such rights for lawyers and judges be squared with a proper functioning of the justice system? Members of this panel will explore the appropriate scope of free speech rights for lawyers both in general and in specific modern contexts and cases.

Attorney Misconduct (R-3)

Judy Gutman, La Trobe University School of Law (Australia); **Paula Baron**, La Trobe University (Australia); **Mark Thomas**, Queensland University of Technology (Australia) (Moderator); and **Niteesh Kumar Upadhyay**, Galgotias University (India)

Judy Gutman and Paula Baron: Telling Tales out of Court? Judges and their Obligation to Report Lawyer Misconduct

This paper is concerned with the judicial power of the courts to discipline lawyers. The regulation governing lawyers in Australia is similar to that of other jurisdictions. The discipline of lawyers who do not meet the professional standards is aimed both at the administration of justice and the protection of clients and the public. However, the schemes rely on complaints being lodged against suspect lawyers. In the main, these complaints are lodged by clients, and some are made by other solicitors and regulators.

Judges also have the power to discipline lawyers, but this power is under-utilized. Judges have an inherent power to control the processes over which they have jurisdiction. This includes the power to discipline lawyers as they operate within that jurisdiction. Yet, as the case law shows, the predominant tools used by judges to control lawyer misconduct are statute based, such as costs orders and other penalties under the Civil Liability Acts. As has been reported by the Australian Law Reform Commission, however, the frequency of judicial reporting of lawyer misconduct is rare. The literature from other jurisdictions suggests that this issue is not confined to Australia.

This paper will draw upon the literature from both the US and Australia relating to lawyer misconduct in court to argue that judges should take seriously their supervisory powers over lawyers. Our central claim is that, that in addition to making costs orders and applying other penalties available to them through statute, judges should report lawyer misconduct to the appropriate regulators for disciplinary purposes. We suggest that

disciplinary orders would be more effective to deal with what are actually ethical breaches. Such orders can affect the reputation of the lawyer and, in turn, their future earning capacity in terms of employment or future client demand. Their likely deterrent effect is thus higher. And, of course, there is symbolic value in judges taking action to uphold ethical standards.

This paper will identify the behaviors that are likely to attract a finding of misconduct (including breaches of the rules of Professional Conduct); analyze some recent cases where it has been acknowledged that lawyers have been guilty of misconduct and yet no complaint was made to the regulators; and recommend that judges ought to be more proactive in using their judicial power to support the aims of the legislation governing lawyers.

Mark Thomas: *The Client Laid ... (Bare): The Sexual Relationships of Lawyers in Australia and Beyond*

'Dream case. Isn't it? High profile. Splashy. Big closing. Get the not guilty. Have sex with the client. It's all there.' Denny Crane: Boston Legal Australia remains one of the few jurisdictions which lacks an express proscription against sexual relationships between lawyers and their clients. The leading Australian decision is now over forty years old, and despite the recent drafting and implementation of a uniform code of conduct for solicitors in all States, the regulatory regime remains silent on sexual relationships with clients.

This paper compares the development of regulatory proscriptions on lawyer-client relationships across a range of jurisdictions, comparing these with the normative values embedded in the codes applying to health professionals.

In doing so, it posits that the Australian regulatory framework has been – and remains – dominated by a discourse of the body, and retains a concept of consent which militates against regulation.

Conventionally, the disinclination to regulate lawyer-client relationships has been illustrated by distinguishing such relationships from those of medical professionals. The more liberal approach taken to lawyer-client lies in the difference in the physical aspects of the relationships: medical practitioners routinely require their patients to undress, and routinely touch patients in the course of diagnosis. The implausibility of a discourse of a body, however, is illustrated by the preponderance of medical disciplinary proceedings against psychiatrists and psychologists.

The normative frameworks which prohibit sexual relationships in other professional contexts have abandoned physical intimacy as the rationale for proscription, turning rather to concepts of power and vulnerability – bolstered by recognition of the contributing phenomena of transference and counter-transference. Under this framework, the distinction between legal and medical professionals is largely eliminated.

Niteesh Kumar Upadhyay: *Common Ethical Misconduct While Doing Legal Research: An Empirical Study*

Falsification, fabrication and plagiarism, these are three aspects which not only contravene the standard code of conduct, but they are also considered an infringement of copyright with regard to the original author's work. These three phenomena are responsible for a reduction in the credibility of legal research going on around the world. An insecurity and fear are constantly faced by readers while they are reading or attributing these sources because of its unauthenticated nature and, on the other hand, the fear of violating copyright of any third person. Fabrications and falsifications of research are one of the crimes that are taken into consideration during the time of checking the reliability of the work. If there is any change in research data by the addition or omission of the author, it constitutes the crime of infringing the integrity of data of the author. The anticipated information also constitutes the very offence, as it is not yet discovered and the submission is made.

Apart from this, I also propose to discuss under this session the role of law teachers and how they can include experiential based/ activity based model of learning to sensitize researchers doing ethical research. In addition to this, I intend to present several models to integrate the ethical conduct while doing research and make recommendations as to how this can be mentored and evaluated. Furthermore, I will review the findings of a study of 180 students, which will show how many of them are involved in ethical misconduct of plagiarism, falsification and fabrication of data. Finally, a detailed analysis of different types of plagiarism and other ethical misconduct will also be done during this session.

Comparative Judicial Ethics in the Digital Age (R-4)

Karen Eltis, University of Ottawa, Faculty of Law (Canada) (Moderator); **Yigal Mersel**, District Court Judge (Israel); **Frances Kiteley**, Ontario Court of Justice (Canada); **Stephen Bindman**, Canadian Centre for Court Technology (Canada); and **Maura R. Grossman**, Of Counsel at Wachtell, Lipton, Rosen & Katz (US)

What happens when judges, in light of their role and responsibilities, and the scrutiny to which they are subjected, fall prey to a condition known as the "online disinhibition effect"? More importantly perhaps, what steps might judges reasonably take in order to pre-empt that fate, proactively addressing judicial social networking and its potential ramification for the administration of justice in the digital age? The immediate purpose of this panel is to generate greater awareness of the issues specifically surrounding judicial social networking and to highlight some practical steps that those responsible for judicial training might consider in order to better equip judges for dealing with the exigencies of the digital realm. The focus is on understanding

how to first recognize and then mitigate privacy and security risks in order to avoid bringing justice into disrepute through mishaps, and to stave off otherwise preventable incidents. This panel endeavors to provide a very brief overview of the emerging normative framework pertinent to the judicial use of social media, from a comparative perspective, concluding with some more practical (however preliminary) recommendations for more prudent and advised ESM use.

Corruption and Ethical Challenges to Legal Professionals (R-5)

Oluyemisi Bamgbose, University of Ibadan (Nigeria); **Saray Run**, Legal Aid of Cambodia (Cambodia); and **Nigel Duncan**, The City Law School (UK) (Moderator)

Various aspects of corruption and ethical challenges will be addressed from three different perspectives of the legal profession located in different parts of the world - Nigeria, Cambodia and the UK.

Oluyemisi Bamgbose and Folake Tafita: *The Nigerian Legal Profession, Then, Now and Future: The Changing Nature and Character of a Profession*

The Nigerian legal profession has a proud legacy of colonial rule metamorphosed over the years, developing, affecting and shaping the legal environment in Nigeria. In those years of glorious metamorphosing, the young vibrant lawyer was a pride to his community and an envy of contemporaries in his intermediate environment, and his profession was highly rated by society and coveted by every aspiring and career seeking youth. Recently however, amidst many factors such as the nation's economic downturn, corrupt leadership and misuse and abuse of information and cyber technology, the legal profession, like other professions, is experiencing negative developments in the practice of the profession. Practice is no longer as lucrative or prestigious.

In a bid to wade through these myriad challenges, some lawyers are now adopting untoward strategies for survival and societal relevance, and some legal professionals are desecrating the revered legacy and violating the ethics of the profession. This development has raised a lot concern for the body of professionals on the teaching, practice and future of law in Nigeria. This paper discusses some ethical concerns and issues affecting the legal profession in Nigeria, exposing the effects and implication of these for the future of legal education and legal practice in Nigeria. It further examines the efforts academia towards restoring the prestige of legal education and practice in Nigeria.

Saray Run: *Legal Profession and Corruption in Cambodian Judicial System*

In this paper, I am going to discuss about the legal profession and corruption in Cambodian judicial system. To address the legal profession for judges and prosecutors, I focus on principles of judicial independence, impartiality, integrity, and diligence.

I will also address corruption in Cambodia. However, I do not discuss about the legal profession for lawyers in this paper. A legal profession refers to a code of conduct for judges, prosecutors and other legal practitioners. However, in Cambodia, the code of conduct for judges and prosecutors is governed by Law on Organization and Functioning of Judges and Prosecutors, while the legal profession for lawyers is governed by Bar Law and Code of Lawyer's Ethics and Morality. Cambodia was under civil war for about 30 years. Between 1975 and 1979, Khmer Rouge killed approximately 1.4 million people. All judicial institutions and legal documents were also destroyed and abolished. Khmer Rouge Regime was overthrown by Vietnam in 1979. A new regime of State of Cambodia was ruled until 1992. Paris agreement gave a power to the United Nations Transitional Authority in Cambodia (UNTACT) to organize national election in Cambodia. A pluralism regime based on monarchy has been formed in 1993.

National Assembly has passed many new laws in response to the political and economic situations. However, judicial laws on legal profession and ethics of judges and prosecutors have never been passed because the government did not have good will. With the absence of judicial laws on legal profession, the judges and prosecutors commit corruptions in Cambodian judicial system and the courts receive a lot criticism from society. The government has passed judicial laws, but lack of independence, impartiality, integrity, confidentiality, and diligence remain concerns. For example, judges and prosecutors in national and sub-national levels are members of party and run political campaigns. With regard to impartiality, judges abdicate cases based on improper influence from government or political party. The corruption in Cambodian judicial system still remains the issue. It is a complex social, political and economic phenomenon that affects a whole society and undermines democratic institutions, slows economic development and contributes to governmental instability. An anti-corruption law is applied unequally and weakly. In conclusion, legal profession and legal ethics are principles for judges and prosecutors performing their functions without fear or favor or outside influences. In absence of law on legal profession and legal ethics, judges and prosecutors will arbitrarily do inappropriate things. Judges and prosecutors who violate the law on legal profession and legal ethics must be sanctioned. If they receive bribe, the anti-corruption law must be applied effectively.

Nigel Duncan: *Facing the Challenge of Corruption: Educating for Experience in the Cognitive and Affective Domains*

This session will present some of the findings arising from the preparation of a book proposing how new lawyers might best be assisted to face the challenge of corrupt cultures and environments. It will consider how a variety of different learning approaches might assist.

The OECD, the IBA and the UNODC have developed an Anti-Corruption Academic Initiative (ACAD) that provides

freely-available course design proposals and materials. This valuable initiative is largely content-driven and this session will explore how to go beyond the cognitive domain on which it focuses. It will present heuristic devices to deepen student understanding of the issues involved and to engage with the affective domain to help students develop the empathy, judgment and moral courage required for effective practice in a corrupt environment.

The session will be supported by a PowerPoint presentation, and will develop into an interactive workshop in which participants explore priorities in the learning approaches adopted, and offer perspectives from their experience in different jurisdictions. Depending on the number of participants this will either be done as group work or open discussion.

Corruption, Dignity and Independence of the Legal Profession: The View from Russia, Nigeria and South Africa (R-6)

Olga Shepeleva, Law school of the High School of Economics (Russia); **Philip Odiase**, Adekunle Ajasin University (Nigeria); **Sandra Prinsloo**, University of Pretoria Law Clinic (South Africa); **Christian Fritz**, University of Pretoria Law Clinic (South Africa); and **Sarisa van Niekerk**, The University of Pretoria (South Africa) (Moderator)

Olga Shepeleva: Teaching Legal Ethics and Professional Values in Corrupted Environment: Russian Example

The paper using the example of Russian law schools will explore how law schools' faculty responds to corruption in judicial and law enforcement sphere. It will describe, how Russian academic and professional community see role of legal education, and in particular teaching of professional ethics, in corrupted environment; and what input to fight against corruption is expected from law schools. It will demonstrate approaches of Russian law schools' teachers to formation of professional identity and values of their students, and describes relevant educational practices. It will also discuss effects of those approaches and practices.

The paper will pay attention not only to pronounced wives and formally recognized educational approaches and practices, but also to approaches and practices which although existing but had not been reflected by the educational community yet.

The author draws her conclusions from an empirical study of legal profession and legal education in Russia, conducted in 2011-2013. The study included more than 100 interviews with practicing lawyers and law school students and faculty members. Main conclusions of the study were further tested in discussions within educational and professional community and in course of legal ethics courses.

Philip Odiase: Restoring Dignity to the Legal Profession In Nigeria: The Role of Law Faculties and the Bar

The Nigerian legal system along with the legal profession was imported from England and patterned after the English legal system both in form and substance. In the years preceding and immediately after independence, the standard of practice was high, particularly due to the prevalence and influence of English lawyers and judges in the country who endeavored to maintain the ideals of the profession. Most unfortunately in contemporary Nigeria, the ethical standards of the profession have changed for the worse. One major reason for this dwindling standard is that the legal profession cannot be isolated from other facets of life in the country and has also been afflicted and ravaged by the same destructive societal virus that has eaten deeply into the fabric of the society. Despite this, the legal profession is still looked upon as the single agent for positive change and social development. However, in order to perform this role, it requires functional, competent and ethical driven lawyers to midwife the progress. Thus, both the bar and law faculties in the country have roles to play. Regrettably, professional ethics as a course is not taught by faculties of law in Nigerian Universities. The paper argues that proper legal education is the most veritable tool in equipping lawyers for this task, coupled with continuing legal education to be provided by the Bar.

Christian Fritz: Over-Regulation: Is the Independence of the Legal Profession and Judiciary Under Threat?

The Constitution of the Republic of South Africa is the supreme law and ensures that each and every person in the Republic, including the government, act in accordance with the provisions thereof. The Constitution ensures judicial independence and requires actions by courts to be without fear or favor while protecting the best interest of the public. The judiciary must ensure that it performs its constitutional duty at all times and adhere to the rule of law.

The preservation of the rule of law and independence of the judiciary relies heavily on an independent and effective legal profession. An independent legal profession serves as insurance that the rights afforded to the public as a whole, as enshrined in the Constitution, is given effect to. The judiciary can only perform its constitutional duty effectively with the assistance of an independent legal profession, where there is a legal representative who at all times act not only in the best interest of their clients but also that of the general public. The Legal Practice Act, which recently came into operation after much controversy, is an attempt to regulate the legal profession in every aspect possible. It seems that this Act will have the undesired effect of over-regulating the legal profession and that there will be a domino effect once the independence of the legal profession is under threat. Will legal representatives be able to act in the best interest of their clients or general public when the legal profession is over-regulated? What threat will over-regulation of the legal

profession have on ethical values of legal representatives and the independence of the judiciary in their effort to uphold the rule of law and perform their constitutional duty?

This paper will consider the possible effect and consequences which over-regulation of the legal profession might have on the legal profession itself, the public and the judiciary. It further considers the threat, over-regulation of the legal profession poses to the independence of the legal profession and the judiciary. Lastly, it will illustrate the possible consequences over-regulation may have on the profession, such as the deterioration of ethical and constitutional values as well as other means to uphold these values without over-regulation.

Sarisa van Niekerk and Frederik Thomas De Ridder: *The Role of Codified-Ethics in Shaping Legal Culture and the Conduct of Lawyers in their Service to the Public*

“The first thing we do, let’s kill all the lawyers” is a line stated by a character in Shakespeare’s play, King Henry VI, that has often been misinterpreted as depicting ordinary people’s perceptions of lawyers and the legal profession as being unethical, immoral, deceptive and expensive, to name a few examples. The character, Dick the Butcher, who uttered the statement, was a follower of a rebel, Jack Cade, who thought that he could become king by disturbing law and order by getting rid of those who instill justice in society. Contrary to popular belief, Shakespeare intended to praise lawyers and the role they play as guardians of justice and the Rule of Law in society. Regardless, however, of whether one agrees with Shakespeare or not - there are lawyers, and there are lawyers.

This paper seeks to look at the role that lawyers and the Law play in society by attempting to define what a lawyer is. It also explores different prejudices and complaints that have developed about lawyers and suggests how it can possibly be resolved. We will also look at the manner in which codified-ethics can regulate the conduct of lawyers in their service to the public and how this influences legal culture as a whole.

Current Trends in Prosecutorial Ethics and Regulation (R-7)

Ellen Yaroshefsky, Cardozo School of Law (US) (Moderator); **Tamara Lave**, University of Miami Law School (US); **Marcia Narine**, St. Thomas University School of Law (US); **Lawrence Hellman**, Oklahoma City University School of Law (US); **Lissa Griffin**, Pace University Law School (US); **Kellie Toole**, Adelaide Law School (Australia); and **Eric Fish**, PhD, Yale Law School (US)

Nationally and internationally, prosecutors’ offices face new, as well as ongoing, challenges and their exercise of discretion significantly affects individuals and entities. This panel will explore a wide range of issues confronting the modern prosecutor. This

will include certain ethical obligations in handling cases, organizational responsibility for wrongful convictions, the impact of the exercise of prosecutorial discretion in whistleblower cases, and the cultural shifts in prosecutors’ offices.

Ethical Aspects of Lawyer Involvement in Mediation (R-8)

Mary Anne Noone, La Trobe University (Australia); **Bobette Wolski**, Bond University (Australia) (Moderator); **Anna K. C. Koo**, University of Hong Kong (Hong Kong); and **Ellen Waldman**, Thomas Jefferson School of Law (US)

Mediation has become an integral part of the civil justice system in Australia and elsewhere. As a consequence many lawyers are now involved in mediation, either as a mediator or as a legal representative for one of the parties to the mediation. These roles raise a host of new ethical dilemmas for lawyers. In this panel discussion, commentators from Australia and the US will explore a number of critical issues for lawyers in mediation including the following:

- Use of mediation in the civil justice system
- Roles for lawyers: as mediators; as legal representatives
- What ethical frameworks govern lawyers when acting as mediators, and legal representatives at mediations
- Conflicting standards for lawyers acting as mediators
- Liability and immunity issues for lawyers acting as mediators
- Should mediators be treated as courts or as opponents? What difference does the answer make?
- What standards of honesty and candor are owed in mediation (by mediators and by legal representatives)?
- Are mediators responsible for outcome fairness and if so why, or why not?
- Conflicting values in mediation.

Mary Anne Noone: *Lawyers as Mediators: What Ethical Framework?*

In this paper we focus on lawyers who act as mediators. In Australia, lawyers (both barristers and solicitors) commonly act as mediators. Professional legal bodies promote the use of lawyers as mediators. Law societies claim that “with their skills, training and experience solicitors are ideally placed to be mediators”. Individuals are encouraged to use lawyers as mediators because of these specialist skills. In this paper, drawing on empirical research interviewing mediators, we compare the different ethical frameworks for lawyers and mediators. We revisit aspects of the potential liability for lawyers who act as mediators in the context of the continued growth of lawyers who offer a mediation service and an emergent discussion about the ethics of mediators and lawyers acting in mediation. Initially we briefly outline the use of mediation in the justice system, models of mediation and the accreditation system of mediators. We detail the current involvement of lawyers acting as mediators, relevant,

sometimes conflicting, professional standards, and potential liability and immunities issues for lawyers acting as mediators.

Bobette Wolski: *Where Do Mediators (and Mediation) Fit in the Regulatory Scheme Governing Lawyers? Unexplored and Unintended Consequences of Treating Mediators as Courts (Paper)*

Mediation is now an integral component of the civil justice system. The question arises as to whether mediators should be treated as courts, or alternatively as third parties (it seems clear that they should not be treated as clients). In Australia, the professional conduct rules for lawyers provide a possible clue to the answer to this question as they define the term 'court' to include 'mediations'. Unfortunately, it is not clear what is meant by this reference. In this paper, it is argued that rule drafters intended the reference to 'mediations' to mean 'mediators'. If this is the case, then lawyers owe to mediators all the same obligations – including in some circumstances, an obligation of candor – as they owe to courts.

There is another side to this debate. If mediators are considered to be 'courts', it may also follow that mediators owe to others (the parties, non-parties affected by the mediation and the general community) obligations to be honest and to ensure fair outcomes. These issues are controversial and in some respects, represent an about-face on the traditional view that mediators are not responsible for outcome fairness. It appears that different answers have been adopted by lawyers' professional bodies in various common law jurisdictions.

This paper will provide a comparative analysis of the rules of conduct governing lawyers in Australia, the UK, the USA and Canada as they apply to these issues. It will consider the implications of treating mediators as courts or as 'other parties'. The author will make recommendations for change to the professional conduct rules in some jurisdictions including that of Australia.

Anna K. C. Koo: *Regulating Lawyers' Behavior in Mediation: A Chinese Perspective*

Mediation activities have proliferated in mainland China and Hong Kong over the last decade. The Chinese government promoted mediation to maintain social stability for economic reforms, while the Hong Kong judiciary hoped to cure the ills of complexity, cost and delay in its civil justice system. Consequently, lawyers have been increasingly involved in mediation as parties' legal representatives. Their new role raises important ethical considerations, such as where a client instructs his or her lawyer to attempt mediation for improper purposes, or a legal representative bluffs about the value of the case. The core issue arises as to whether and how the current legal framework and rules of professional conduct regulate lawyers' behavior in mediation, which is masked by the private nature of the process and the principle of confidentiality. Jim Mason and Bobette Wolski are the latest contributors to this debate, focusing on the jurisdictions in the UK, the US and Australia. This paper

examines the general duties owed by legal representatives to their clients in mediation in mainland China and Hong Kong. In so doing, it provides a comparative analysis of how existing legal and professional conduct rules could resolve potential ethical dilemmas in mediation. It concludes by arguing whether rules are the best way to modify the behavior of lawyers.

Ethics and the Legal Profession in India (R-9)

Sushant Chandra, Jindal Global Law School (India); **Deergha Airen**, Hidayatullah National Law University (India); and **Badrinath Rao**, Kettering University (US) (Moderator)

Sushant Chandra: *Indian Regulations on Ethics: The Nexus with the Backlog of Cases*

Penumbra in the ethical regulations and existing rules contribute majorly, if not entirely, to the backlog of cases in the Indian Courts. This paper aims to shed light on the inadequacy of the existing statutory text in catering to the requirements of satisfactory disposal of cases. Lack of integrity in the legal system is responsible for this systemic failure. This paper shall primarily delve into ethical regulations and existing rules in exploring their bearing on the pendency of cases. The Indian state of Uttar Pradesh, which has the highest pendency of cases in the country, shall be taken up as an illustrative model. Empirical data and surveys from the State should give the audience an idea about the lackadaisical attitudes towards the pendency of cases and the authorities' comfort with the existing model of rules. There are umpteen local practices, including frequent adjournments without due cause, strikes, and references, which have made a dent in the efficient functioning of the courts. There are also hierarchical arrangements between the High Court and the subordinate courts which stand in the way of realizing an individual's liberty to speedy justice and further contribute to the backlog of cases. The last part of this paper shall set out suggestions and recommendations with a view to reducing the pendency of cases.

Sanjana Roy and Deergha Airen: *Judicial Ethics in India: Is it Getting Jeopardized by the Excessive Interference of the Executive?*

This paper states that the strength of the Indian Republic can be said to rest on the doctrine of separation of powers between the legislature and the executive on the one hand and the judiciary on the other. But this independence given to the judiciary appears to be only on paper as by India's experience, judicial independence has often suffered and its ethics given way to executive high handedness which we will analyze in this paper through case studies. From the days of imposition of national emergency in 1976 the hints of cornering the judiciary in India is evident. In the present, the National Judicial Appointments Act, 2014 has created a debate in the country due to its provisions which favor the executive. Through this paper, we will study the method of appointment of judges in United States of America and United Kingdom and see whether NJAC really favors the executive.

Badrinath Rao: *What Makes Indian Lawyers 'Unethical'? The Challenges of Institutionalizing Legal Ethics in India*

Unlike advocates of an earlier epoch who were held in high esteem mainly for their stellar role in opposing British imperialism, India's 1.3 million lawyers live under a cloud of opprobrium today. Their conduct, lately, has been egregious and unedifying. Indian lawyers have repeatedly gone on strikes disregarding Supreme Court verdicts holding that strikes and boycotts constitute professional misconduct. They routinely resort to violence and vigilantism, sometimes within the court premises. Lawyers are notorious for subverting the legal process, tampering with evidence, coaching witnesses to lie in court, moral policing in some instances, refusing to provide legal counsel to defendants in 'nationalist' cases, blatantly refusing to obey the law, and disrupting court proceedings. To exacerbate matters, according to some reports, about 25% of so-called lawyers have no legal training; they operate on the basis of fake credentials.

Received wisdom ascribes unethical behavior to the burgeoning ranks of ill-schooled riff-raffs in the profession, declining professionalism; and, the lack of a moral compass. Scholarly critiques blame systemic lacunae: effete regulation by the Bar Council of India, the apex self-regulating statutory body for policing the profession. Others have faulted the structure of the legal profession where the winner takes all, leaving hordes of less fortunate advocates scrambling for survival. The preponderance of patron-client relationships, family and kin networks also stymies the prospects of first generation attorneys. The resulting frustration supposedly leads to unruly conduct.

Against such conventional interpretations, I argue that the unethical conduct of lawyers, particularly those in the lower echelons of the profession, must be understood in the context of the complex socio-economic, political, and cultural forces at work in India today. Indian society is marked by sharp social cleavages, sclerotic, delegitimized institutions, low levels of human development, widespread corruption and the absence of norms, predatory capitalist development, rising income disparities, and extremely limited opportunities for upward mobility. The most striking feature of contemporary India is the near total abdication by the state of its commitment to social inclusion and the common weal. This has led to a massive trust deficit and unleashed the basest instincts of different stakeholders. Exploiting this free-for-all scenario, lawyers, as a well-knit special interest group, are vying for a greater share of power and privileges in a system that is overrun by buccaneers and brigands. Immorality is kosher in this situation.

Unscrupulous prosperous lawyers deftly cover their ethical lapses. Many in the lower ranks, who have little else than their raw physical power and collective might, assert themselves in the only way they can: through brute force and hooliganism. They lack decent legal education, have virtually no training in ethics and the liberal arts, and know little English, the language of the higher judiciary. Such blighting circumstances notwithstanding,

mere membership in the legal fraternity confers on them privileges of professional identity which they leverage in their dealings with a callous state, clients, law enforcement, and the judiciary. Besides, it is the quickest avenue for vertical mobility.

As perverse as it might seem, the 'unethical' behavior of lawyers, particularly those at the lower levels, is emblematic of their quest for empowerment and identity, both of which the elites have impeded for a long time. Legal ethics, thus, is an epiphenomenon of a larger metamorphosis currently underway in India. From a largely feudal society, it is transitioning, in a painfully slow and sporadic fashion, into a modern democratic state. Being a low-intensity democracy, the Indian state lacks the capacity and commitment to catalyze this process. The grotesque moral aberrations of the legal fraternity are just one facet of this transformation.

Ethics in Criminal Advocacy (R-10)

Lissa Griffin, Pace Law School (US) (Moderator); **Stephanie Roberts**, University of Westminster (UK); **Anat Horovitz**, Hebrew University (Israel); **Lawrence Hellman**, Oklahoma City University School of Law (US); **Kellie Toole**, University of Adelaide (Australia); **Marny Requa**, Queens University (Ireland); and **Shawn Marie Boyne**, IU McKinney School of Law (US)

Scholars at the intersection of criminal procedure and ethics discuss recent developments in criminal practice ethics from a comparative perspective.

Innovation and the Practice of Law (R-11)

Alberto Bernabe, The John Marshall Law School (US) (Moderator); **Deborah Rhode**, Stanford University (US); **Helena Whalen-Bridge**, National University of Singapore Faculty of Law (Singapore); **Deanne Sowter**, The Winkler Institute for Dispute Resolution (Canada); and **Michele DeStefano**, University of Miami Law School (US)

During the last two years, there has been much discussion about the need to encourage innovation in the practice of law. Some of the discussion is in reaction to changes in the approach to regulation in the United Kingdom and Australia. Some of it is in reaction to the growing dissatisfaction with the current state based regulatory system that creates barriers for lawyers to practice across jurisdictions and some, perhaps most, of it is in reaction to the growing concern about a market for legal services that fails to meet the needs of those who need those services. To address the concerns in the United States, the American Bar Association has created a Commission on the Future of Legal Services and some jurisdictions have already begun to make important changes. More changes, challenges and suggestions for change are to be expected in the near future. This program will address the debate over some approaches to innovation including:

Partnerships with non-lawyers and non-lawyer ownership of law firms

1. Unauthorized practice of law by lawyers
2. Authorized practice of law by non-lawyers
3. Mandatory representation for those who can't afford it
4. How lawyers of tomorrow will practice in the multi-disciplinary global marketplace.

Deborah Rhode will explore what an alternative regulatory regime would look like for alternative providers of legal services, such as non-lawyers and entities with non-lawyer investors. Helena Whalen-Bridge will address whether the newly redesigned regulatory framework should include mandatory pro-bono in order to address the access to justice gap. Michele DeStefano will advance a new pyramidal structure shifting from the “what” to the “how” — how lawyers of tomorrow will practice, and how they will meet the needs of the new global, complex, multi-disciplinary legal marketplace. Finally, Deanne Sowter will speak about specific innovative practices in the area of family law, including collaborative practice as an example of innovation from within the profession.

Integrity In Judicial Ethics And Regulation (R-12)

Suzanne Le Mire, University of Adelaide (Australia) (Moderator); **Gabrielle Appleby**, University of New South Wales (Australia); **Adam Dodek**, University of Ottawa (Canada); **Richard Devlin**, Schulich School of Law Dalhousie University (Canada); **Sarah Cravens**, The University of Akron School of Law (US); **Andrew Lynch**, UNSW Law (Australia); **Alysia Blackham**, Melbourne Law School (Australia); and **Graham Gee**, University of Birmingham (UK)

Conveners: **Gabrielle Appleby** (UNSW) and **Suzanne Le Mire** (Adelaide)

Sponsored by: **The Judiciary Project** (Gilbert + Tobin Centre of Public Law, UNSW)

Integrity in Judicial Ethics and Regulation will bring together leading experts on judicial ethics to debate the conceptual bases for judicial regulation and explore contemporary issues and developments, with a focus on judicial appointment, support and discipline. The program will commence with Richard Devlin and Adam Dodek presenting their conceptual framework for designing and assessing judicial regimes, which offers an alternative to the traditional paradigm in which independence and integrity are presented as inherently conflicted objectives. The program will then move to discussion of contemporary issues in judicial regulation in a number of jurisdictions. Graham Gee will assess the regulation of judicial appointments by reference to the work of the UK judicial appointments commission ten years after its introduction. Sarah Cravens will explore public confidence as a major driver of regulatory efforts in the electoral

context that continues to see challenges in terms of pressure for money and speech to flow as freely on the judicial side as they do in campaigns for representative political office. The final two papers will consider how judges in office can be supported in their roles. Andrew Lynch will consider the institutional challenges arising from cases of judicial incapacity, including the difficulty of providing appropriate support for and regulation of judges confronted with physical and mental illness. Gabrielle Appleby and Suzanne Le Mire will examine the possibilities of judicial guidance through education and counseling services by reference to the judicial ethics advisory boards operating in the United States. Appleby and Alysia Blackham conclude the panel with a paper that investigates the extent to which misconduct and disciplining regimes should extend to judges post-retirement, and the role that soft law instruments should play in regulating retired judges.

Richard Devlin and Adam Dodek: *A New Framework for Conceiving and Assessing Judicial Integrity*

Graham Gee: *Formalizing Judicial Appointments: Lessons from the Judicial Appointments Commission*

Sarah Cravens: *The Enduring Importance of Public Confidence in the Regulation of Judicial Ethics: The Current Electoral Context in the U.S.*

Andrew Lynch: *The Challenges of Judicial Incapacity*

Gabrielle Appleby and Suzanne Le Mire: *The Possibilities of Judicial Guidance and Counseling*

Gabrielle Appleby and Alysia Blackham: *Retiring in the Shadow of the Court: Ethical and Legal Restrictions on Retired Judges*

International Perspectives on the Regulation of Lawyers and Legal Services (R-13)

Andrew Boon, City University London (UK) (Moderator); **Linda Haller**, Melbourne Law School, University of Melbourne (Australia); **Matthias Kilian**, University of Cologne (Germany); **Selene Mize**, University of Otago Faculty of Law (New Zealand); **Yasutomo Morigiwa**, Nagoya University Graduate School of Law (Japan); **Deborah Rhode**, Stanford University School of Law (US); and **Noel Semple**, University of Windsor Faculty of Law (Canada)

In many Western democracies the regulation of socially important service sectors is undergoing a significant transition. The involvement of representative professions in regulation of their membership is being disrupted. Traditional models of

professional regulation, based on conduct rules and disciplinary tribunals, are being adapted or supplemented by new systems. This panel will explore professionalism as the dominant means for controlling markets for legal services in several key countries from the perspective of the involvement of the state in regulation, professional organization, regulatory philosophy, regulatory mechanisms and regulatory ideology (the impacts, short and longer term, on professions, professional independence and the rule of law).

Judicial Ethics (R-14)

Simon O'Toole, Barrister, Inner Temple (UK) (Moderator); **Honorable Lady Justice Heather Hallett**, Judge of the Court of Appeal (UK); **His Honour Judge Donald Cryan**, Circuit Judge (UK); and **Pamela Scriven**, Barrister, Inner Temple (UK)

The programme will begin with a paper and then be followed by a panel discussion and Q&A. The paper will discuss how judges in the UK acquire their ethical instincts in private practice and then apply them when appointed, and whether this is adequate training in judicial ethics. In particular it will examine the extent to which a judge's ethical values should influence their discretionary judgments in a common law jurisdiction. The panel will also discuss the issue of regulation in the context of maintaining the highest standards of those appointed judges and arbitrators.

Each of the Panel is a member of the governing body of the Honourable Society of the Inner Temple in London. Lady Justice Hallett is a past Treasurer (past Chairman) and His Hon. Judge Cryan is the current Treasurer (Chairman) of the Inner Temple.

Perspectives on Expanding Access to Justice (R-15)

Michael Webster, University of Warwick (UK); **Jamie Baxter**, Schulich School of Law (Canada) (Moderator); **Nick Johnson**, Nottingham Law School (UK); and **Olaf Halvorsen Rønning**, University of Oslo (Norway)

Michael Webster: *Facilitating Access to Justice: Beyond Lawyers - A View from the UK*

Access to justice is under threat in the United States with reductions in the Legal Services Corporation's Legal Aid Budget. The effect has been to create a deficiency in legal services provision. This exists between individuals who can no longer afford to use lawyers, and are often forced to represent themselves, and individuals who can afford to use lawyers, but who do not recognize their problem as having a legal solution.

This has prompted the American Bar Association ('ABA') to consider other modes of access, and in particular, growing

experience of federally-authorized legal services providers ('LSPs'). In recent years, LSPs have been authorized in several States to operate within courthouses. LSPs can include licensed legal technicians and bankruptcy petition preparers for example. However, there has been a reluctance to go quite as far as England & Wales in authorizing non-lawyer owned legal services providers (also known as Alternative Business Structures). In contrast, these have been promoted by the English Legal Services Act 2007.

In October 2015, the ABA's Commission on the Future of Legal Services launched a consultation paper on new categories of LSPs. This seeks to address whether access to legal services might be improved if the pool of providers was expanded to include individuals without a JD and full law license; and the extent to which those who are not licensed to practice law should be permitted to have an ownership interest in law firms. This paper attempts to address these questions from a US/UK comparative perspective.

Jamie Baxter: *The Urban Economy of Access to Justice*

While much has been written about the economics of access to justice by focusing on the costs of legal services provision and regulation, little attention has been devoted to exploring the influence of geography and the location decisions of lawyers and other legal service providers. This paper draws on insights from the field of urban agglomeration economics to explain how and why the geography of legal practice and access to justice has changed and is continuing to evolve, and it argues that greater attention to these spatial dimensions may help to confront some of the most pressing barriers to access confronted by users and policymakers alike.

Nick Johnson: *Clinic as a Regulated Entity – To What Extent Does the UK ABS Model Provide a Basis for the Transformation of Law School Clinics?*

The Legal Service Act 2007 created the opportunity for non-lawyer bodies in England and Wales to offer legal services in England and Wales and to own and manage legal practices. The Act also envisaged legal services being provided alongside other services to members of the public and set up a regulatory regime the aim of which was to promote greater access to justice and legal services.

Since the Act came into force, a wide variety of bodies have set up legal practices outside of the scope of the traditional practice model with varying degrees of success. The reaction of the profession has often been hostile. However, this paper will argue that, in line with a long-standing tradition of Universities developing spin-offs, the ABS regime provides University law schools with unique opportunities:

- to develop the teaching of practice regulation and ethics within a fully regulated environment;
- to explore other methods of delivering legal services and resolving deficiencies in the availability of legal services;
- to provide a fertile environment to research, and to some extent, experiment with the delivery of legal services and with practical ethical issues surrounding the delivery of legal services.

Olaf Halvorsen Rønning: *Standards And Regulation of Quality Of Legal Services - A European Human Rights Perspective*

I propose a paper on standards and regulation of the quality of legal assistance from a human rights perspective. The paper will be based on part of my current PhD research project on human rights obligations to secure access to legal assistance, under the European Convention of Human Rights (ECHR). I will present an analysis of the case law of the European Court of Human Rights (ECtHR) on government obligations to ensure legal assistance of sufficient quality. Although the performance of a lawyer as a main rule does not incur state responsibility under the ECHR, the states have responsibility to ensure effective access to justice and fair trial, which might require legal assistance. If such legal assistance is sub-standard, state responsibility might arise in special circumstances, cf. e.g. the Artico-case. My paper will first examine which normative standards the ECtHR use when assessing lawyer performance, which mainly are national and international codes of conduct and national laws and regulations, but also – more interestingly—other normative conceptions of lawyers performance. I will then elaborate on the most interesting areas where such standards are breached, in particular problems relating to the lawyers' professional judgment. Last, I will examine the case law on how states should (and can) act to regulate such substandard work, a balancing act between the states' obligations and the independence of the legal profession.

Professional Development and Training through a Variety of Models: Apprenticeship, Externship and Post-Qualification Platforms (R-16)

Melissa Deehring, Qatar University College of Law (Qatar); **Jeff Giddings**, Griffith University (Australia) (Moderator); **John Flood**, Griffith University (Australia); **Sandra Prinsloo**, University of Pretoria (South Africa) **Christina Mosalagae**, University of Pretoria (South Africa); and **Roland Fletcher**, The Open University (UK)

Melissa Deehring: *Encouraging Diversity in the Middle East; How an Externship Program is Changing the Face of the Qatari Legal Profession*

In 2011, Qatar University College of Law established the Externship Program, a practical skills class designed to teach students real life lawyering skills and encourage their pursuit of legal careers while balancing Qatari history, identity, traditions, and customs.

Initially, the program encountered resistance. During the first several years, many relatives objected to female students' participation and/or chose to accompany students to interviews and even the first few weeks of the externship experiences themselves.

Yet, despite initial complications, the program has proven enormously successful in the Qatari community with more than 380 students participating, almost 75% of them being female. From a small program that began with 12 students competing for 18 jobs with 15 different employers, during fall semester 2015, the program hosted 72 students who competed for 103 jobs with 51 different employers (500% increase in students per semester, 472% increase in jobs per semester and 240% increase in participating employers per semester).

This paper aims to explain: 1) how Qatar University College of Law tailored a traditionally Western educational program for use in the Middle East; 2) results the program has obtained relating to female students' participation including their externship preferences, self-reported growth and statistics relating to their entrance into the legal profession; and 3) a brief overview of the Program's newly awarded \$550,000 two-year NPRP grant that will further study the legal landscape for young female legal professionals in Qatar while encouraging their entrance into the profession.

Christina Mosalagae and Sandra Prinsloo: *The Effectiveness of Legal Education in Teaching Ethics for Legal Practice in South Africa*

Ethics is often a misunderstood area of law and legal practice. This is due to the wide gap between what is being taught in law schools and what is applied as ethics in legal practice. Furthermore, the nature of taught ethics is often far removed from the realities of the application of ethics in legal practice. We are of the opinion that law schools do not provide law students with the tools to correctly identify and address the various ethical questions that may arise in legal practice.

This paper is structured in three parts: we start off by looking at how ethics theory is introduced and taught in the Bachelor of Laws (LLB) degree as well as other post-qualification platforms in South African legal education. This entails considering modules within the LLB degree that are specifically focused on teaching ethics theory and those that encourage ethical thinking in students. Thereafter, the availability of post-qualification ethics training is considered.

In the second component of the paper we will look at the possible implications of behavioral ethics for the South African legal profession. We hope to investigate how behavioral ethics can

be introduced into the LLB curriculum and applied to the legal profession.

Thirdly, we will critically analyze the ethics component of the Attorney's Admission examination (Admission exam) as prescribed by the Law Society of South Africa. This entails statistically analyzing the composition of the Ethics paper of the Admission exam, the weight of questions based on ethics theory as well as looking at the declining nature of questions on ethics theory in the Ethics paper.

We will conclude with recommendations on how to bridge the gap between taught ethics and ethics in legal practice by looking at the South African legal profession and other jurisdictions.

Jeff Giddings and John Flood: *Reshaping and Retaining the Legal Professional Apprenticeship*

This proposed paper will consider ways to retain the strengths of traditional professional apprenticeship models in the face of changes to the content and organization of professional work.

Historically, the distinctive feature of professional preparation has been supervised practice experiences, following or combined with the learning of the foundations of professional knowledge. Such processes have enabled novices to develop the skills, values and judgment that are held as hallmarks of work that entails being entrusted with responsibility for the interests of others. Traditionally, effective apprenticeship involves the modelling of expert judgment and then coaching of the learner through similar activities to develop the blend of analytic and practical habits of mind demanded by professional practice. Like other professions, law faces challenges to its traditional professional apprenticeship arrangements generated by globalization, digitization, greater professional mobility and emphasis on working in interdisciplinary teams.

The extensive literature on professions, principally from sociology and management, reveals the power and privilege connected to their work. More recently, writing has focused on understanding the shift of professional work to large work settings where practitioners exercise discretion in that setting, rather than retaining control over their work. This literature tends not to focus on the processes that can best foster effective preparation for professional work of this nature. This paper draws on developments from a range of disciplines (business, engineering, journalism and nursing) to address the contribution of the professional apprenticeship to the preparation of modern legal professionals.

Roland Fletcher: *Legal Education and Proposed Regulation of the Legal Profession in England and Wales: A Transformation or a Tragedy?*

The Solicitors Regulation Authority (SRA) have undertaken a review of legal education and have produced a new pathway to 'train' and qualify as a solicitor in England and Wales. They are implementing a number of radical changes which will have a

direct effect on legal education and how educational provision will be delivered to students who wish to practice law in England and Wales in the near future. The SRA have put forward a number of proposals and have introduced the apprenticeship model. This has far reaching implications for Higher Educational Institutions (HEIs), such as their current business models. Many HEIs currently adopt a business model which accommodates the delivery of educational provision for those students who wish to study law and qualify as a solicitor. The changes that are likely to come in to force will either remove or diminish the current pathways available to study and qualify as a solicitor. The replacement offered by the SRA is the apprenticeship model which will send shock waves through the higher educational institutions who have invested in their infrastructure which currently provides legal education for their students. The SRA believe these changes they are introducing will provide a framework that is flexible and is not reliant on a sequence of exams and prescriptive stages to qualify as a solicitor, such as the academic stage (LLB), the Legal Practice Course (LPC) and the completion of a two year training contract which is compounded by increased tuition fees. One of the SRA's major criticisms of the current system is the way the LPC assesses specified standards during specific intervals. They believe the current standards are not universally applied and there is a lack of transparency and consistency across the higher education sector. In response to these concerns the SRA have produced a new model which they refer to as the 'trailblazer,' otherwise known as the apprenticeship model.

Professional Regulation Challenges: Perspectives and Responses (R-17)

Russell Christopher, University of Tulsa College of Law (US); **Stephen Pitel**, Faculty of Law, Western University (Canada) (Moderator); **Alain Roussy**, University of Ottawa (Canada); and **Tom Lininger**, University of Oregon School of Law (US)

Russell Christopher: *Conditioning Settlement Offers on Attorneys' Fees Waivers (Absent a Fee-Shifting Statute)*

The Supreme Court in *Evans v. Jeff D.* upheld the permissibility of defendants conditioning settlement offers on plaintiffs' counsel waiving their eligibility for court-awarded fees under a fee-shifting statute promoting public interest litigation. The Court and conventional wisdom assumes the ineffectiveness or impermissibility of such offers in ordinary, private civil litigation absent a fee-shifting statute. That is, the axiomatic assumption is that no litigant permissibly could or effectively would condition a very favorable settlement offer on the opposing counsel waiving fees or the client not paying the fees to which the counsel was entitled through a private contract with the client. This paper examines this conventional wisdom and axiomatic assumption by considering how exploiting a lawyer's fiduciary duty to place the client's interests above the lawyer's and a lawyer's duty to abide by the client's authority to accept settlements may make

conditioning such settlement offers effective. The paper also examines rationales as to why such conditional offers might be impermissible, including tortious interference with a contract. While not advocating for the use and permissibility of such settlement offers, this paper concludes that the conventional wisdom and axiomatic assumption that they could not successfully be used is questionable.

Stephen Pitel: *Reconsidering Lawyers' Obligations to Raise Contrary Authority*

Lawyers in Canada are required when acting as an advocate to inform the court or tribunal of any binding authority they consider to be directly on point that has not been mentioned by another party. The aim of this paper is to review this obligation and evaluate whether it requires modification. This obligation has not been the subject of detailed analysis in Canada. As a comparative point of reference, the paper will draw on experience and analysis from the United States. Possible issues include whether the obligation should be expanded to include relevant persuasive authority or directly on-point scholarly analysis, whether the standard should focus on the lawyer's intention or a lesser mental requirement such as carelessness, and how the obligation should be addressed by courts and tribunals.

Alain Roussy: *Legal Ethics and Official Languages*

In Ontario, as in other Canadian provinces and in other countries, laws are passed in more than one language. In Ontario, they are passed in English and French. Both versions of the law are "official". In an ideal world, those two versions would say the exact same thing and capture all of the nuances of the other version. That, however, is not the case. Courts have often had to grapple with differences, sometimes glaring, but more often subtle, in the drafting of bilingual legislation and have had to develop methods to interpret that legislation. The inevitable consequence of this is that when a lawyer is reading a statute in only one language, that lawyer cannot be sure that he or she is truly getting the full picture of the law.

A similar phenomenon occurs when Courts in officially bilingual jurisdictions publish their decisions in only one language. This happens at the Court of Appeal for Ontario, for example. Very few decisions are published in English and French. Most decisions are in English only and a small percentage are in French only. Decisions in either language are, of course, binding and may have an important impact on the law. Once again, a lawyer who reads the Court of Appeal's decisions only in one language would be missing out on a portion (large or small) of the Court's jurisprudence. The consequence of this is that a lawyer who ignores laws written in an official language or who ignores decisions published in an official language is not looking at the totality of the law and therefore cannot adequately advise a client. This has an impact on issues of professional negligence, but also on the legal ethics of the lawyer, more specifically on the question of his or her competence.

This proposition may be less controversial in jurisdictions where there are two official languages that are of equal "strength" in the sense that there are approximately the same number of speakers of both languages. There may be a heightened expectation in those jurisdictions that lawyers are capable of operating in both languages. The proposition is, however, more controversial in jurisdictions where there is an important imbalance between the majority and the minority population. Ontario is but one example of such a situation that arises in many countries around the world. In that province, French - though essentially an official language for legislative and Court purposes - accounts for approximately 5% of the population.

Tom Lininger: *Green Ethics for Lawyers*

The ethical rules for lawyers encourage zealous advocacy on behalf of clients, but do not incentivize lawyers to take steps that could minimize harm to the environment. This Article proposes a comprehensive set of amendments to the American Bar Association ("ABA") Model Rules of Professional Conduct. The goal is to establish not only opportunities, but also obligations, for lawyers to promote environmental health. Certain proposals in this Article represent only a small extension of the present rules, and deserve consideration for immediate adoption, including a proposed liberalization of confidentiality rules to permit disclosures in the case of imminent environmental harm, an expansion of lawyers' counseling duties, a reconceptualization of third-party harm, an enlarged scope of supervisory responsibility, and a redefinition of pro bono service. The Article goes on to discuss, without necessarily advocating, some more radical ideas for reform. These include a stricter rule against positional conflicts, a more lenient standard for evaluating frivolity of environmental claims, a heightened obligation of candor with respect to environmental harm, and greater accountability for environmental damage caused by lawyers and firms. The Article concludes by addressing foreseeable objections to its proposals. One possible problem is that an expanded whistleblowing duty might alienate clients from their counsel, increasing the risk of environmental harm. The Article also considers the risk of bifurcating the bar into pro-environment and anti-environment factions. Such concerns necessitate caution, but they cannot justify the ABA Model Rules' currently tepid approach to protection of the environment.

Professional Values and Corporate Lawyers (R-18)

Steven Vaughan, University of Birmingham (UK) (Moderator); **Joan Loughrey**, University of Leeds (UK); **Susan Fortney**, Texas A&M University (US); **Suzanne Le Mire**, University of Adelaide (Australia); and **Richard Moorhead**, University College London (UK)

A suite of recent corporate scandals, the rising role and importance of the in house lawyer, and revived regulatory interest in notions of professionalism make this an ideal time to question

the values of corporate lawyers working for private firms and for employer organizations. In this program, organized by Joan Loughrey and Steven Vaughan, we offer insights from the UK, Australia and the US.

In her paper, Joan Loughrey will examine problems inherent in meta-regulating large law firms—that is, in relying on firms to promote ethical compliance through ethical infrastructures; Susan Fortney will also speak on “Ethical Conduct and Organizational Structures, Systems, and Culture in Law Firms?”; Steven Vaughan draws on interviews with 133 transactional lawyers, compliance officers and risk officers across 33 of the top 200 English law firms to question how ethical those lawyers are, and whether they have in place the appropriate infrastructures to help them recognize and manage ethical issues.

Suzanne le Mire focuses on the regulation and reality of lawyers as corporate gatekeepers. Richard Moorhead’s paper is linked to his current ‘Ethical Leadership’ project. This explores the potential for in-house lawyers to act as ethical leaders, and is based on a series of interviews, ‘town hall’ focus groups and an online survey with c.500 UK inside counsel.

Regulating Lawyers in a Liberalized Legal Services Market: Developments for the Corporate Counsel in the EU (R-19)

Laura Bugatti, University of Brescia - School of Law (Italy); **Bernd Mayer**, Skadden, Arps, Slate, Meagher & Flom LLP (Germany); **Nicola Zeibig**, Leibniz University Hannover (Germany); and **Hendrik Schneider**, University of Leipzig (Germany) (Moderator)

Laura Bugatti: *Time of Changes in the European Internal Market: Impact on the Legal Profession*

The EU Institutions—starting from the Lisbon Strategy—have recognized the crucial role played by the professional services in improving the competitiveness of the EU economy. Accordingly, the Commission has launched several enquiries in order to give an economic perspective on the regulation of the liberal professions and has invited Member States to make an effort to remove restrictive rules which are unjustified, disproportionate and unnecessary to the public interest.

The EU initiative had and still has a profound effect on the professions’ regulation all over Europe, but at the same time in high-regulated jurisdictions, like Italy, this process of reassessment is turning out to be troublesome.

Against this background the paper aims at investigating:

1. The changes and the new challenges faced by the legal profession imposed by the EU economic prospective taking into account: i) the justifications for the professional restrictive rules existing in several countries; ii) the costs and benefits of introducing competition mechanisms into legal services markets; and
2. The value, respectively for lawyers and consumers, of qualitative access restrictions (like minimum periods of education, professional experience, examinations) and restriction concerning the legal activities themselves (such as fixed prices, advertising rule and so on).

The paper addresses the final question of what kind and which level of restrictions should be more adequate to ensure the protection of consumers and the high quality of professional service, taking into consideration the openness of the market as well as the safeguard of the public interest

Hendrik Schneider: *The Company in the Turtle Formation - Is the Limitation of the Legal Privilege for Company Lawyers under German Criminal Law Still Up-to-Date?*

As companies expand across borders, investigations of potentially illegal business activities also take on a global dimension. Yet despite this trend, many laws have remained localized and failure to properly understand differences between jurisdictions can lead to unintended and perhaps negative results.

One area illustrating this paradigm is legal professional privilege (LPP), also referred to as attorney-client privilege. Common law jurisdictions have traditionally protected communication between the client and lawyer and civil law jurisdictions have recently followed suit. The rationale behind LPP is to encourage full and frank disclosure without fear that communication will be disclosed to third parties.

But although there is a general recognition of LPP, each jurisdiction has its own nuances and there is thus no global rule. A particularly grey area is whether LPP extends to in-house counsel during an internal investigation. While American courts can extend LPP in this situation, other jurisdictions have held that in-house counsel might not be sufficiently independent to warrant protection. Furthermore, some jurisdictions do not allow LPP to attach to non-national qualified lawyers, while other jurisdictions leave open this possibility.

As a result, a company that launches an internal investigation and wishes to protect legal communication or work product must be aware of a myriad of differences from the countries in which it operates. The purpose of this paper is to explore the development of LPP in relation to internal investigations throughout a selection of jurisdictions, with emphasis on the United States, United Kingdom, Germany, and the European Union.

Bernd Mayer and Nicola Zeibig: *In-house Counsel Under the New German Legislation*

Recently a new statutory regulation for in-house counsel was passed by both German legislative bodies, Bundestag and Bundesrat. It is a result of a decision by the Federal Social Court of Germany in which the Court held that the occupational field of in-house lawyers is profoundly different from that laid out in the Federal Lawyers' Act (hereinafter, BRAO).

The new regulations stipulate that in-house counsel as well as lawyers fall within the scope of said law. This alignment is bound to raise questions how an in-house lawyer can reasonably be expected to adhere to the same standards of professional conduct that an independent lawyer has to honor. Professional independence on the one side and being subject to direction by superiors within the company, namely the board, will create a constant field of tension for in-house counsel.

Focusing on the cornerstones of professional conduct certain issues become apparent. First, the duty of a lawyer entails the prohibition to approach the other party without the consent of the opposing counsel, § 43 BRAO, § 12 Rules of Professional Practice, which will affect communication and negotiation with business partners. Second, under § 43 a para. 4 BRAO, a lawyer may not represent conflicting interests and as such will often be hindered to represent a parent company and its subsidiary. In a corporate structure where one legal department represents not only the parent company but also its subsidiaries, such conflicts of interests are bound to emerge.

Regulating the Delivery of Legal Services - The FATF and Lawyers as Gatekeepers (R-20)

Jack Sahl, University of Akron School of Law (US) (Moderator); **Laurel Terry**, Penn State Dickinson Law (US); **Frederica Wilson**, Federation of Law Societies of Canada (Canada); and **Carole Caple**, Law Council of Australia (Australia)

The Financial Action Task Force (FATF) was created in 1989 and currently includes 34 member nations and two regional associations. FATF's reach is global given the participation by observer organizations and associate members, many of which are similar organizations from particular regions in the world. The FATF sets standards and "promotes effective implementation" of policies to combat money laundering and terrorist financing. Although FATF Recommendations are not legally binding, they have been extremely influential "soft law" since the FATF has the right to exclude members that do not implement its Recommendations. Many of the FATF's Recommendations apply to "designated non-financial businesses and professions," which includes lawyers involved in a broad range of activities.

This panel examines the impact of the FATF's policies on the regulation and delivery of legal services. The panel will cover recent FATF-related developments, including the 2015 landmark decision of Attorney General of Canada v. Federation of Law Societies of Canada (striking down portions of an anti-money laundering law intruding on the attorney-client privilege); the FATF's ongoing 4th Mutual Evaluation process, which has reviewed legal profession implementation in a number of countries, including the United States, Australia, and elsewhere; and the role of regulatory and representational entities, such as the American Bar Association, in responding to the FATF Recommendations and Mutual Evaluations.

Panelists will include representatives from countries that have or will go through the FATF 4th Mutual Evaluation Procedure, including, potentially, representatives from all continents.

Special Topics in Professional Regulation: The Regulatory Role of Competition Law; The Inadvertent Disclosure Of Litigation Risk; The Role of Professional Privilege in Government Representations; and Data Protection and Attorney-Client Privilege (R-21)

Andy Chen, Department of Financial and Economic Law, Chung Yuan Christian University (Taiwan); **Elizabeth Tippet**, University of Oregon School of Law (US) (Moderator); **Dror Arad-Ayalon**, Arad-Ayalon & Nachmany Law Office (Israel); and **Sven Kohlmeier**, Law Firm Kohlmeier/Kanzlei Kohlmeier (Germany)

Andy Chen: *Legal Ethics and the Regulation of Information-Asymmetry Problem in Competition Law: An Economic and Transformative Perspective*

Using the experience from Taiwan, we examine the issue concerning the potential conflicts between legal ethics and competition law in this paper. We argue for a more prominent role for competition law in controlling the market-failure problem regularly thought to be only remediable by self-regulations. We begin with a theoretical analysis of the justifications for exempting legal ethics from competition review. The purpose is to show that both economic (e.g. externalities from free-riding behavior) and non-economic (e.g. protecting professional independence) rationales for exemption could all be understood as responses to the information-asymmetry phenomenon prevalent in the market for legal services. Hence, an economics-centered analytical framework is preferable for coherent policy making. We demonstrate further that competition law provides a transformative function that is frequently neglected in the literature supporting exemption. Proponents of exemption usually treat legal services as a preordained "credence good" whose quality could not be ascertained even after they are provided. By contrast, we argued that a well-implemented competition law could turn legal services into an "experienced good" or even "search good" through information competition among service providers.

This paper is structured as follows. Part I and II introduce the current legal ethics requirements and their potential conflicts with the competition law in Taiwan. Part III describes how conventional justifications for exempting legal ethics from competition review can be streamlined into an economics-centered analytical framework. Part IV uses the framework to establish the transformative function that competition law could provide to control information-asymmetry problem. We illustrate our view by re-examining the representative cases decided by the Taiwan Fair Trade Commission in Part V and conclude the paper with certain policy suggestions in Part VI.

Elizabeth Tippet: *Do Attorneys Inadvertently Broadcast their Risk Assessments through Contract Provisions?*

This preliminary study examines whether lawyers inadvertently broadcast their internal assessment of a client's litigation risk by including certain provisions in their form contracts. To answer this question, I estimate the litigation risk of a sample of companies and then identify provisions of their form contracts statistically associated with those risk scores. I find that the presence of certain contract provisions intended to mitigate a particular litigation risk do a reasonably good job of sorting companies into "higher risk" and "lower risk" buckets. I then discuss whether government agencies could or should use this types of information in targeting companies for enforcement, and the implications for attorney decision-making.

Dror Arad-Ayalon: *Have Internal Counsel of Public Institutions Become Completely Institutionalized? On Loyalty and Privilege in Public Institutions by Dror Arad-Ayalon*

It is obvious to all that for the purposes of receipt of advice and legal representation by a governmental institution, there is a real need and justification for attorney-client confidentiality and privilege. The question is, whether such confidentiality and privilege prevail over the public interest in law enforcement authorities seeking truth and justice? Renewed thought is necessary as to the degree of protection of professional confidentiality afforded in terms of relations between governmental bodies operating on behalf of the general public, and their in-house legal counsels, who are also acting as public servants, especially in light of the general expectation of truthful disclosure and transparency of governance. The principal duty of trust and loyalty of a governmental institution and consequently also of its in-house legal counsel, is owed to the general public (or to the public interest). Therefore, in a case of an overruling public interest (as in the case of a criminal or disciplinary investigation in an important case), the protection of professional confidentiality and privilege might have to be withdrawn or weakened. Thus, so it is argued, the privilege enjoyed by in-house counsel of a public institution does not have to be absolute (as in the case of "private" professional privilege) but rather relative. According to this contention, in-house counsel trust and fidelity prevailing in a governmental

institutions are not "personal" and therefore the governmental institution does not "own" the privilege and its consent is not required in order to waive it. On the other hand, it is argued that if the protection were to be adversely impacted and there were to be a weakening of the professional privilege, i.e. the in-house counsel of governmental institution is completely "institutionalized", alternative solutions would be sought by those occupying positions in governmental institutions, and they would prefer to engage an external counsel and sometimes personally and privately. Such a decentralization effect is likely to adversely impact the propriety of the administration of the governmental body, because instead of promoting its institutional interest in being assisted by in-house legal counsel who is committed to the organization interests and values, it actually might be challenged by private counsel assisting and driving those occupying positions to protect their own personal and private interests.

Sven Kohlmeier: *Quo Vadis Attorney-Client Privilege? Missing Data Protection in Law Firms and Government Surveillance*

The Attorney-client privilege is one of the most important value for lawyers. Lawyers' secrecy is the brand's essence of lawyers business. The client knows that the lawyer will disclose neither the clients name nor the content of the case to someone else without client's consent. Attorney at Law and certified specialist on IT-Law Sven Kohlmeier explains that missing data protection in law firms endangers the attorney-client privilege. And he gives an overview of the jurisdiction of Germany's highest court, the Federal Constitutional Court, which judges again and again to protect citizens' rights and the lawyers' secrecy against government surveillance.

The Ethics of Judicial Appointments I (R-22)

Sarah Cravens, University of Akron (US); **Reid Mortensen**, University of Southern Queensland (Australia) (Moderator); **Andrew Lynch**, University of New South Wales (Australia); and **Dmitry Bam**, University of Maine School of Law (US)

The panel will explore the ethics (including conventions) of judicial appointments in the context of the different processes used in parts of the United States and Australia. A common theme will be the role and validity of political considerations in the process of appointments. Panelists will also consider the input of the legal profession and other judges in judicial appointments, and the effect that a politicized appointments process might have on the conduct and ethics of the judges themselves.

The Ethics of Judicial Appointments II (R-23)

Ameze Guobadia, Nigerian Institute of Advanced Legal Studies (Nigeria); **Graham Gee**, University of Sheffield (UK); **Richard Devlin**, Dalhousie University (Canada) (Moderator); **Adam Dodek**, University of Ottawa (Canada); and **Harish Salve**, Blackstone Chambers (India)

The panel is the second on the ethics of judicial appointments. It explores the relationship between the ethics and processes of appointments and the independence of the judiciary. Special attention is given in this panel to the role of judicial appointments commissions in Commonwealth jurisdictions.

The Hardest Issues in “Public Interest Lawyering” Today I (R-24)

Tony Alfieri, University of Miami School of Law (US) (Moderator); **Sameer Ashar**, UC Irvine Law School (US); **Susan Carle**, American University Washington College of Law (US); **Scott Cummings**, UCLA Law School (US); and **Fabio de Sa e Silvia**, Institute for Applied Economic Research (Brazil)

Much of the current debate about the mismatch between traditional legal ethics rules and the changing nature of law practice focuses on law firms and business lawyers. Yet the rapid rate of global change and its effects on the legal profession have at least as much impact on lawyers seeking to advance the interests of those lacking in power. Panelists will offer views on these topics as part of a collective project that will address these issues in a co-authored work. They reflect the perspectives of a variety of scholars and/or activists engaged in different traditions of social change lawyering, each addressing the question: What are the hardest legal ethics issues facing “public interest” lawyers today? The panel will explore how changing socio-political contexts and corresponding new strategies for social change lawyering can produce legal ethics dilemmas, and also how legal ethics regulatory structures may merit revision in light of the changing approaches and needs of the “public interest” bar.

The Hardest Issues in “Public Interest Lawyering” Today II (R-25)

Kate Kruse, Hamline University Law School (US); **Anita Sinha**, American University Washington College of Law (US); **Jessie Tannenbaum**, ABA Rule of Law Initiative; **Natasha Martin**, University of Seattle School of Law (US); and **Paul Tremblay**, Boston College School of Law (US) (Moderator)

Much of the current debate about the mismatch between traditional legal ethics rules and the changing nature of law practice focuses on law firms and business lawyers. Yet the rapid rate of global change and its effects on the legal profession have at least as much impact on lawyers seeking to advance the interests of

those lacking in power. Panelists will offer views on these topics as part of a collective project that will address these issues in a co-authored work. They reflect the perspectives of a variety of scholars and/or activists engaged in different traditions of social change lawyering, each addressing the question: What are the hardest legal ethics issues facing “public interest” lawyers today? The panel will explore how changing socio-political contexts and corresponding new strategies for social change lawyering can produce legal ethics dilemmas, and also how legal ethics regulatory structures may merit revision in light of the changing approaches and needs of the “public interest” bar.

The Role of Bar Associations in Successful Legal Profession Development in Transitioning Countries (R-26)

Azamat Kerimbaev, American Bar Association Rule of Law Initiative (Kyrgyz Republic); **Jessie Tannenbaum**, Senior Legal Analyst with American Bar Association Rule of Law Initiative (US) (Moderator); **Geoffrey Alagaratnam**, Bar Association President (Sri Lanka); and **Merita Stublla-Emini**, Kosovo Bar Association Gender Committee (Kosovo)

The development of a strong, independent, and effective legal profession is a cornerstone of democracy and human rights, protecting the rule of law and providing a means for citizens to assert their rights. What does a strong, independent, and effective legal profession look like? What role do bar associations play in strengthening the legal profession in emerging democracies, post-conflict societies, and developing countries? What challenges do bar associations face and how can they be overcome? Leaders of the legal profession from around the world will discuss these questions and share their experience of strengthening the legal profession in times of societal and governmental transition.

Too Few Judges: Effects, Backlogs and Workloads (R-27)

Eyal Katvan, College of Law & Business (Israel) (Moderator); **Keren Weinshall-Margel**, Faculty of Law, The Hebrew University of Jerusalem (Israel); and **Fernando Galindo**, University of Zaragoza (Spain)

Claims regarding the scarcity of judges and its consequences are an important issue in various jurisdictions. The concerns are that citizens and organizations may be denied access to justice; parties may suffer delays of justice; prosecutors may decline to prosecute more cases; judges may become overworked etc. This session investigates whether there is substance to the claims of a shortage of judges, and if so, the severity of the problem; it seeks out the sources of the problem; and examines the results of the attempts to solve it. This session intends to study the phenomenon by comparing different legal systems and the methods each one of them has found to address the problem.

ETHICS AND LEGAL EDUCATION

Actions Speak Louder Than Words: The Ethical Law School (T-1)

Anneka Ferguson, Australian National University Legal Workshop (Australia); **Ernest Ojukwu**, Network of University Legal Aid Institutions (Nigeria); **Ahmed Al-Hawamdeh**, Jerash University (Jordan); **Neil Gold**, University of Windsor (Canada); **Elida Nogoibaeva**, American University of Central Asia (Kyrgyz Republic); **Veronika Tomoszková**, Palacky University (Czech Republic); and **Leah Wortham**, The Catholic University of America (US) (Moderator)

Felix Frankfurter said in a letter to a friend: “In the last analysis, the law is what the lawyers are. And the law and the lawyers are what law schools make them.” This session will consider how a law school’s environment and institutional structures contribute or detract from forming ethical professionals who will contribute to fair and just legal systems, grounding the discussion in U.S. and Australian empirical research and adding a comparative perspective. The session will focus on not only the place of legal ethics courses, but also the overall institutional messages that students receive. Anneka Ferguson, whose Australian empirical research with Stephen Tang and others builds on the pioneering U.S. work of Lawrence Krieger and Kennon Sheldon, will lead off and be followed by Ernest Ojukwu, a leader in ethics education in Nigeria, who has spoken extensively on the relationship of individual professional formation to societal transformation. Panelists, with considerable law teaching and administrative experience in additional parts of the world, will comment regarding the changes in the educational environment within their countries or regions that they believe would foster graduates operating with the integrity, professionalism, and ethical norms they would like to see.

Clinic Selection, Access and Orientation: What are the Ethical Issues and Who are the Stakeholders? (T-2)

Elaine Hall, Northumbria University (UK); **Jonny Hall**, Northumbria University (UK); **Christopher Simmonds**, Northumbria University (UK); and **Keeley Fletcher**, Sheffield Hallam University (UK)
Moderator: **Elaine Campbell**, Northumbria University (UK)

Elaine Hall/Johnny Hall/Cath Sylvester/Carol Boothby: *“To Him That Hath, More Shall Be Given”: Ethical Issues Arising from the Selection of Students for Legal Clinic Programmes*

In England and Wales there is currently no requirement that students are educated in professional ethics during the academic stages of training. Not only is there no requirement to do so but “the majority of undergraduate law schools persist in doing virtually nothing explicit to assist new entrants to meet the profession’s ethical standards of behavior and, therefore, they are almost totally reliant on what happens at the vocational phase.” (Economides and Rodgers, 2009).

The study of ethics at the taught vocational stage is almost entirely aimed at ensuring compliance with a code of conduct rather than a broader understanding of, and adoption of, professional legal ethical values. While there is the opportunity during the work based vocational stage of training (the Training Contract) to inculcate professional ethical values through relatively close and experienced supervision, the explicit training requirements continue to focus on compliance with the code.

Leaving the teaching of professional ethics and conduct to the vocational stage not only leads to a narrow study of professional conduct, it fails to give students the opportunity to understand the obligations lawyers owe to society as a whole (Hepple, 1996; Economides and Rodgers, 2009). This can be seen not only from the pragmatic support for professionalism perspective but also from the perspective of the richer academic study of the values which shape and inform legal and more generally professional practice (Economides and Rodgers, 2009).

Clinical educators in some jurisdictions claim that involvement in legal clinic teaches advanced professional and situational ethics through the live client experience (Noone and Dickson 2001). It builds on the standard ethical education offered to law students (Kerrigan, 2007 Nicolson 2015) enhancing it experientially and encouraging students to reflect (Nicolson 2008) and critically engage with their ethical position (Kerrigan 2007). In England and Wales on undergraduate programmes it may offer the only explicit introduction to ethical standards of behavior. The first part of this paper will consist of a systematic review of the literature on ethical education through clinic, with a discussion of the underlying theoretical process models used by legal educators to explain the development of ethical awareness, action and reflexivity and the extent to which these models are empirically supported.

The second part of the paper reports on empirical work looking at students' learning trajectories on the four year Masters level qualifying law degree at Northumbria University in the UK. Northumbria is unusual in that our programme has a compulsory clinical element, contrasting with most other universities where clinic is an option or a voluntary programme. Since all our students participate in and are assessed on clinic, we have been able to do a retrospective analysis tracking cohorts from entry, through the various elements of legal education and to their final degree outcome. The focus at Northumbria has been on professional legal ethics. Recent work on inculcating students with the importance of ethical considerations highlighted the potential value of the clinical aspect of the degree, but reported limited success in effectively developing a robust programme of ethical teaching and proposing that this may be in part due to the pressure of assessed subjects squeezing non assessed topics such as ethics out of the curriculum, save where required. As a result, students receive a 'thread' of professional ethics, with a limited number of lectures, a court report exercise and exposure through their tort, litigation and evidence module but hope of expanding students experiences of ethics in the early years of the degree were not realized, (Sandford-Couch and Bainbridge, 2015). This then potentially placed more reliance on the clinical experience to provide ethical training, experience and reflexivity- fortunately for our students, clinic is currently a compulsory component of this degree.

But if clinic is to be relied on in this way, does this disadvantage certain groups of students? One aspect of the findings is that students who perform in the lower quartiles in the first two years of the degree tend to perform strongly in the clinical elements of the third and fourth years, often raising their grade across the boundary to a higher level.

This strikes us as particularly noteworthy for those programmes who cannot offer clinical opportunities to all their students and who must therefore employ some form of selection. Anecdotal evidence from European and International networks suggests that selection processes often employ measures of prior attainment and the sole or as a significant factor. This is justified as being in the interests of vulnerable clients, who must be served by 'the best' students. Our findings suggest that students who do well in academic legal studies are not necessarily 'the best' at clinic and that moreover, students from less advantaged backgrounds benefit most from the opportunity that experiential learning in clinic affords. In trying to staff our clinics with 'the best' students are we blocking the advancement of those who might serve as well or better?

Moreover, if the legal ethics education of our students is enhanced by clinic experience, should universities provide alternate or compensatory ethical teaching for students who cannot access clinic? Returning to the models developed through the literature review, we consider what critical or catalytic elements of such learning experiences might be.

Christopher Simmonds: *A Right Way to Do Things and Doing Things Right?*

In the context of clinical legal education a clear focus on ethics is essential. We are educating students who we hope will go on to form the next generation of lawyers and so they need a comprehensive understanding of the rules that we operate to. In the 16th and 17th Centuries speeches by the Lord Chief Justice suggested that the conduct of solicitors required them to: 1) Assist the poor and oppressed; 2) Always promote the truth; and 3) Dissuade clients from pursuing unjust cases. In the modern era, it is perhaps not as easy to say that ethics is merely 'doing what is right' and the focus of our ethical codes have shifted more to ensure access to justice as opposed to attempting to define what is 'right' or 'just' in a given case. That poses challenges for us in clinical legal education, though. When we come to form clinics to what extent should we comply with our professional codes and to what extent should we follow a moral code? Should we promote social justice rather than ensure that we allow access to all to our clinics? This paper explores the conflicts that can arise between the social justice aspect of clinic and the professional obligations of lawyers in England and Wales to highlight the challenges teaching ethics through clinical legal education in an adversarial jurisdiction.

Keeley Fletcher: *Ethics and Education - Balancing the Interests of Stakeholders in Clinical Legal Education*

Clinical legal education can be effective in developing ethical lawyers but is this to the detriment of other stakeholders?

The effectiveness of students in providing pro bono legal services can have a significant impact on a range of stakeholders, including; academic institutions, service users and wider society. Whether the impact is a positive one is dependent on maintaining the right balance between the stakeholders.

This presentation will consider case studies from the Helena Kennedy Centre for International Justice at Sheffield Hallam University focusing on the impact of clinical legal education on stakeholders and on how universities can strike the right balance between potentially conflicting interests.

Comparative Approaches to Teaching Professional Responsibility in the Public Interest (T-3)

Paula Galowitz, New York University School of Law (US) (Moderator); **Catherine Klein**, The Catholic University of America (US); **Mohamed Y. Mattar**, Qatar University College of Law (Qatar); **Marzia Barbera**, University of Brescia (Italy); and **Anna Cody**, University of New South Wales (Australia)

The perspectives of the presenters are varied including teaching professional responsibility within a clinic; as a clinical

component of an applied ethics course; as a separate course on legal ethics for the legal profession; and a separate course on professional responsibility in the public interest. One of the presenters has also been doing empirical research on the impact of the clinical component of an applied ethics course on students and whether it increases their expressed commitment to contributing to the community; some aspects of this research will be included in the presentation. All of the presenters are active members of GAJE (Global Alliance for Justice Education).

Certain critical professional responsibility issues that relate directly to social responsibility will be addressed, from comparative perspectives. We will discuss how to raise these issues with students and teach them in effective ways, using innovative and active methods of teaching our students. The session will also include incorporating the comparative law methodology in addressing issues of legal aid and legal ethics.

Experiential Approaches to Teaching Behavioral Legal Ethics (T-4)

Julian Webb, University of Melbourne Law School (Australia) (Moderator); **Tigran Eldred**, New England Law | Boston (US); **Vivien Holmes**, Australian National University College of Law (Australia); and **James Milles**, University of Buffalo School of Law (US)

This panel will focus on experiential approaches to teaching behavioral legal ethics. These include simulation exercises that place students in role where situational influences that affect behavior can be explored and the use of multimedia and online resources to engage students in the foundations of behavioral science. In keeping with this approach, the panel will not only report on the latest empirical and educational research, but will involve audience members in interactive exercises so as to illuminate core findings of behavioral research.

Forming Professional Identity (T-5)

Lauren Bartlett, Ohio Northern University Pettit College of Law (US); **Tuomas Tiittala**, University of Helsinki, Faculty of Law (Finland); **Francisco Esparraga**, University of Notre Dame Australia School of Law (Australia); **Juan Beca**, Universidad Católica de Temuco (Chile); and **Markus Walz**, Stockholm University (Sweden)

Moderator: **Solomon Shinerock**, Assistant United States Attorney for the Northern District of New York

This discussion focuses on teaching and learning legal ethics and professionalism. The starting point of the discussions is the familiar critique towards deontology narrowly understood: the view that to become an ethically competent professional it is enough to study and obey codes of conduct for lawyers. In their respective but overlapping ways the panelists suggest better ways to teach legal ethics and professionalism than those currently used in the Australian, Chilean, Finnish and US law schools and faculties. The panelists consider the role of human rights

principles in developing professional ethical sensibility; reflect on competing conceptions of the notion of professionalism; discuss how appreciation of virtues such as integrity, candor and honesty could be instilled in students; and suggest that ethics should be taught as a competence which students can develop in stages.

Lauren Bartlett: *Teaching Legal Ethics and Professionalism Using Human Rights Principles*

Focusing on the intersection between human rights, ethics, and the rules of professional conduct, students can learn to apply human rights principles to their everyday interactions with colleagues, clients, and courts. In doing so, they can fundamentally re-examine the role of ethics and professionalism in their everyday lives as future professionals, towards a higher sense of purpose and, hopefully, greater effect. The Human Rights Principles for the Legal Profession (the “Human Rights Principles”) introduced in this article, read alongside rules of professional conduct, are much more aspirational. The Human Rights Principles provide simple, yet ambitious goals, such as treating all people with respect and as an equal at all times. This article starts with a brief explanation of how the human rights framework is relevant to ethics and professionalism in the United States. The article then explains how and why the Human Rights Principles were developed. Then, the Human Rights Principles are compared and contrasted to the American Bar Association’s Model Rules of Professional Conduct, as well as several states rules of professional conduct. The article also makes brief comparisons with other ethics codes, such as a few different social work codes of ethics. Lastly, the article makes suggestions on how to use the Human Rights Principles in law teaching.

Tuomas Tiittala: *Legal Professionalism in (Clinical) Legal Education: Different Conceptions Evaluated in the Context of a Nascent All-Round Law Clinic*

Students’ professional development has been recognized as a key aim of clinical legal education. But what is legal professionalism? What sense of professionalism is conveyed in codes of conduct for lawyers? For some it means ethics in the sense of shared values and virtues, while others may regard this equating as a legitimization of privileges. This paper explores different meanings given to ‘professionalism’ in legal ethics scholarship and codes of conduct for lawyers. This is done out of philosophical curiosity and to help new law clinic teachers to critically and holistically teach professionalism and law clinic students to develop as reflective practitioners. The question for clinical teachers when establishing a new clinic, is how to choose between and use different understandings of professionalism? How should the teachers’ personal preferences affect the teaching of professionalism? This questions and responses given to it should be examined together with the question whether a law clinic can or should be (a)political? The need to better understand the meanings of professionalism is timely and pressing for the author because he and

his colleagues have opened and continue to develop an all-round clinic in Helsinki, Finland. The different meanings of professionalism will be explored by telling the story so far of the Helsinki Law Clinic (HLC). By January 2016, HLC has comprised an introductory course and a legal information service for asylum seekers and refugees. In the future, it will provide counseling on issues relating to migration, discrimination and activities of startups and small enterprises.

Francisco Esparraga: *Teaching Legal Ethics: A Broader Mandate*

The true profession of law is based on an ideal of honorable service. A review of curricula in Australian University Law Schools reveals that most Universities tend to take a relatively narrow view of ethics which sees it as limited to the rules of “professional practice” in the law. Most institutions tend to focus on legal ethics as “the law of lawyering rather than recognizing the connection between the personal and the professional which genuine professional integrity and responsibility entail”. Since the legal community tends to view ethics as a matter of practitioners’ “professional obligation” to respect the codified rules of professional practice, it explicitly adopts a prescriptive view of ethics, one which equates to a morality of duty and obligation. This raises the challenging question of how legal ethics ought to be taught and what students ought to be taught about the relationship between the law and ethics. This is particularly important because law schools have the power to shape the future direction of legal practice in the way they educate future practitioners. How does one teach good character, connoting moral or ethical strength, which combines traits such as integrity, candor and honesty?

Legal education in English speaking countries has been affected by the traditional common law paradigm of private legal practice, regulation of the profession by the courts and the appointment of senior practitioners to the judiciary. This contrasts with the European civil law traditions of an enhanced role for public sector lawyers, State regulation of legal practice and career judiciaries.

Juan Beca: *Ethical Education: Teaching to Obey or Teaching to Decide?*

Ethics can be taught as deontology, expecting students to learn and apply some given rules, or as a reflection process. Future legal professionals should be prepared to deal with new ethical challenges, which today do not exist. For doing so they need to develop an ethical consciousness, which is possible to acquire through a profound ethical learning process. It is not possible to develop the latter if we limit ethical teaching to a deontological approach, given that fact that not all the ethical dilemmas they will face in professional life are considered in heteronomous rules.

Ethic is reflection, a practical reflection, and therefore we think that ethics should be taught as a competence, so students would

learn how to reflect ethically and go through a discernment process. Peer learning has been proved to be highly effective, and a group discernment will prepare in a better way students for their professional life, where they will face the need to discuss and solve difficult ethical dilemmas with clients, colleagues and associates. Using a competence approach may help students to make progress through different moral development stages, and develop their autonomy to make decisions. In this way, we can prepare students to decide rather than to just obey on ethical issues.

Markus Walz: *Ideals In Practice: Studying Commercial Lawyers’ Professional Identity Work In Situ*

Professionalism as a normative value system is often assumed to act as a guiding logic for professionals’ behavior, beyond alternative structuring systems like market or organization logics. At the same time, professionalism is described as under threat by competing discourses, e.g. commercialization or bureaucratization. Contrary to such a macro-level approach, there is a call to study professionalism in the everyday practices of individual professionals. This paper answers this call by treating professionalism as a crucial aspect of individuals’ identity work. More concretely, by studying lawyers working in big law firms and within the field of international commercial arbitration, the paper investigates how individuals refer to professionalism when making sense of concrete situations at work, to highlight what roles professional ideals play in everyday action. Advancing the thesis that professionalism is best understood as embedded within and interrelated with multiple other discourses, the paper analyzes the (discursive) framing strategies professionals employ to make sense of their professional identity. This analysis leaves us skeptical towards the potential of professionalism to act as a ‘third logic’, but instead emphasizes the need to discuss professionalism in concrete work contexts (in situ) and in relation to a multitude of other discourses (intertextual). The paper is a contribution to the study of professionalism as a contextual, micro-sociological phenomenon and emphasizes the need for further study of professional identity work as embedded in multiple discourses.

Global Comparisons Regarding When and How to Teach Ethics (T-6)

Sam Erugo, Abia State University (Nigeria); **Jane Power**, University of Notre Dame (Australia); **Asha Bajpai**, School of Law, Tata Institute of Social Sciences (India) (Moderator); **Monique van de Griendt**, Dialogue (Netherlands); **Hein Karskens**, Beroepsopleiding Advocaten (Netherlands); and **Mick Veldhuijsen**, Beroepsopleiding Advocaten (Netherlands)

Coming from different global perspectives, the presenters of this session admit that the competence of a lawyer must integrate requisite knowledge, skill and values. Ethics is one of those values that a lawyer must imbibe through teaching and learn to

live with, in and out of practice. The lawyer must accept social responsibility and a strong professional ethic – a commitment to the integrity and working of the legal system. Years of legal education and continuing professional development must create, above all, a socially sensitive lawyer of conscience, for whom justice for all is the mission. Lawyers and legal academics are becoming extremely aware of how crucial it is to teach ethics. The challenge is as to when and how to teach ethics to future lawyers with measurable assurance of lasting assimilation and preparedness to competently resolve future conflicting ethical issues and dilemmas.

The session will consider the importance of ethics education, role of ethics in practice and the dilemma of conflicting ethical rules and choices. It will focus on the trend in ethics teaching, including content and timing of the curriculum, as well as the impact of recent reforms. Those attending will come away with ideas to implement standard curriculum at their universities. They will also participate in a short discussion sharing experiences of integrating ethics into their curriculum. Presenters look forward to meaningful contribution from participants.

Sam Erugo: *Teaching Ethics: The Challenge of Methodology and Conflicting Rules*

The goal of legal education includes training of competent lawyers. Admittedly, the competence of a lawyer must integrate requisite knowledge, skill and values. Ethics is one of those values that a lawyer must imbibe and learn to live with in and out of practice. Appropriate legal education must inculcate relevant ethics in the lawyer. The challenge is how to teach professional ethics to future lawyers with measurable assurance of lasting assimilation; and preparedness to competently resolve future ethical issues and dilemmas.

The traditional approach to legal education taught ethics by recitation of the rules of professional conduct. It offered nothing beyond the theoretical lectures, dictation and note-taking. In Nigeria, this lesson was delivered during the one year professional vocational training at the law school. That was hardly enough training. Consequently, the trainee lawyer was let loose unethically unprepared for the ethical dilemmas of practice. Most of them had to learn from own or others' mistakes in practice and many never learnt the ethics well enough. It is widely accepted that a critical part of learning about ethical rules lies in understanding how they apply in practice, and being immersed in that practice. The introduction of clinical legal education with suited variety of experiential learning methods brought opportunities for effective teaching and assessment of clinical student's appreciation of ethics in simulated, practical or live cases. But there is the further challenge of perplexing ethical dilemmas of conflicting ethical rules.

This paper explores dimensions of conflicting ethical rules seeking to share experience.

Jane Power: *Too Little, Too Late – Not Ethics!*

Atticus Finch or Denny Crane? Lawyers and legal academics are becoming extremely aware of how crucial it is to teach ethics to law students. Ethical breaches by newer graduates are not so often caused by a 'bad' lawyer as much as an inexperienced one. Awareness and understanding of ethical issues should begin in Law School.

The law curriculum at the University of Notre Dame Australia (Fremantle campus) firmly believes in early education. First year law students must complete a unit of 7 weeks instruction from a philosopher grounding students in an understanding of moral philosophy. In the final 6 weeks a law academic targets ethics in law and service learning - introducing students to some of the self – regulation legislation of the local profession and ethical obligations to marginalized groups needing legal assistance. Final year students complete another compulsory unit that includes legal ethics and a more in-depth knowledge of the regulatory framework. To compliment this topping and tailing of ethical instruction in the curriculum, tutorial and assessment questions may include ethical 'situations' that students learn to identify.

This presentation defines the content and timing of the curriculum to illustrate how education at tertiary level empowers new law graduates to be more ethically aware and responsible; including student feedback on the curriculum. Those attending will come away with ideas to implement a similar curriculum at their universities. They will also participate in a short discussion sharing experiences of integrating ethics into their curriculum.

Asha Bajpai: *Legal Education Reforms and Legal Ethics in India*

The Indian lawyer must not only have improved legal skills but most importantly, must embody social responsibility, a strong professional ethic and a commitment to the integrity and working of the legal system. Years of legal education and continuing professional development must create, above all, a socially sensitive lawyer of conscience, one for whom justice for all is the mission. Law is not only a career choice or a commercial opportunity, but a means of empowerment of society through ethical means. This paper will present an overview of the current scenario of legal education in India and highlight the gaps. The subheading will be: 1) The gaps in legal education in India; 2) The making of an LLM in Access to justice Program; 3) The process and content challenges in implementation of the curriculum; 4) The role of ethics in the classroom and in the field; 5) conflicts and choices; and 6) The way forward with reforms in legal education, including inclusion, access and ethics.

Monique van de Griendt, Hein

Karskens and Mick Veldhuijsen: *Teaching Ethics to Young Lawyers in The Netherlands*

In 2013 the Dutch Bar Association renewed the required Legal Profession Course. During the first 3 years of their legal career, young lawyers have to follow the Legal Profession Course. The programme exists of courses, training, e-learning and exams in legal subjects, legal ethics and lawyers' skills. In the cognitive education and the skills training, ethical dilemmas are included. The Course starts with a 2 day conference on Legal Ethics where young lawyers are learning legal ethics on an interactive way. In this programme we explain the content of the legal ethics education of young lawyers and we will demonstrate the interactive way legal ethics are taught in the Netherlands.

International Perspectives on Legal Ethics: A View from the Americas (T-7)

Martin Bohmer, Universidad de Buenos Aires (Argentina); **Timothy Casey**, California Western School of Law (US) (Moderator); **Juny Montoya Vargas**, Universidad de Los Andes (Colombia); **Ricardo Garcia de la Rosa**, Instituto Tecnológico Automono de Mexico (Mexico); **Jose Carlos Llerena Robles**, Universidad del Pacífico Law School (Peru); **Maria Lucia Torres Villareal**, Universidad de Rosario (Colombia); and **Ronaldo Porto Macedo Jr.**, Universidade de Sao Paulo Law School (Brazil)

Legal ethics is a proxy for the role of lawyers in a constitutional democracy. As nations evolve from code-based legal systems where lawyers serve primarily as 'readers' of the law to legal systems where lawyers interpret and shape the law, the ethics of lawyering becomes a critical piece in the structure of legal system. Legal ethics should be integrated into constitutional systems of government.

In the first part of the program, voices from Argentina, Colombia, Peru, and Mexico will describe the state of affairs in various constitutional democracies, the evolving role of lawyers, and the critical function of legal ethics. In the second part of the presentation, representatives from Argentina, Colombia, and the United States will share experiences teaching legal ethics in the clinical context. The third part of the program will be an interactive exchange with the audience.

We will explore several questions: What is the connection between evolving legal systems and the role of lawyers? Why is legal ethics important to the professional identity of lawyers in a constitutional democracy or to the rule of law? Should lawyers receive formal training in legal ethics? Should ethics be a part of the law school curriculum? What are the challenges in teaching ethics - either to law students or to lawyers? What are the most effective means for transferring the key concepts and ideas that animate legal ethics?

Legal Education and Legal Ethics in Pakistan (T-8)

Hajira Qureshi, UMT School of Law and Policy (Pakistan); **Syed Imad-Ud-Din Asad**, Advocate, High Court and UMT School of Law and Policy (Pakistan) (Moderator); and **Rana Sajjad Ahmad**, Advocate, High Court (Pakistan) Pakistan inherited the legal system set up in British India. Lawyers have always played an important role in Pakistan. However, over the years the overall state of legal education and legal ethics in the country has not been satisfactory, rather it has deteriorated. Recently, there have been attempts by Pakistan Bar Council to improve the system of legal education and the standard of legal ethics. Have these measures been successful? What are the hurdles? What more needs to be done? Can we learn something from other jurisdictions? These are some of the questions that will be addressed by the panel. Members of the panel will represent lawyers, legal academics, and Pakistan Bar Council.

Legal Ethics in Action: Dispatches from the Front Lines (T-9)

Mary Gentile, Babson College (US); **Steven Chanenson**, Villanova University Charles Widger School of Law (US) (Moderator); and **Anneka Ferguson**, Australian National University (Australia)

Giving Voice to Values ("GVV") is a pedagogy that revolves around "ethical implementation and asks the question: What would I say and do if I were going to act on my values?" <http://www.babson.edu/Academics/teaching-research/gvv/Pages/home.aspx>. It focuses on post-decision action. Used worldwide in business schools and corporations, GVV has much to offer the legal academy. Although law students may know what is right and what the Rules demand, many struggle with how to act on that knowledge.

This panel will explore strategies for incorporating GVV into legal education, including through stand-alone programs and integration into traditional doctrinal courses. Legal ethics in law school is often relegated to one specialized, rule-bound course. While necessary, this approach is not sufficient to prepare students to handle the challenges they will face as practicing attorneys. GVV encourages students to move beyond the admittedly important debates over the Rules and focus on developing the "moral muscle memory" that will help them act on their values.

The panel features professors who have used GVV in both business and legal education at the most advanced – as well as the most basic – levels. Mary Gentile, who developed GVV and fosters its growth across the curriculum, will provide a foundation in the model. Anneka Ferguson will share Australian empirical research and GVV implementation in a professionalism program. Justine Rogers will offer another perspective from Australia focused on situating GVV in a course entitled Lawyers, Ethics & Justice. Steve Chanenson will report on nascent efforts to introduce GVV in American law schools.

Narrative Ethics (T-10)

Helena Whalen-Bridge, National University of Singapore Faculty of Law (Singapore) (Moderator); **Steven Johansen**, Lewis and Clark Law School (US); and **Lori D. Johnson**, William S. Boyd School of Law/UNLV (US)

Professional rules prohibit lawyers from making intentional misstatements of fact as well as material omissions, but do they provide adequate guidance for the use of narrative in persuasive fact presentation? Persuasive narrative techniques are gaining traction in scholarship and legal writing courses, but no rules specifically address their use or guide lawyers or students in determining the relationship between evidence and narrative. The papers on this panel address the question of whether the current no-rules environment is adequate or whether narrative techniques call for specialized guidance.

New Approaches to Teaching Legal Ethics (T-11)

Roseline Ehiemua, Ambrose Alli University (Nigeria); **Katerina Lewinbuk**, South Texas College of Law (US); **Caroline Strevens**, School of Law University of Portsmouth (UK); and **Hugh McFaul**, The Open University (UK) (Moderator)

The papers on this panel will explore new approaches to the challenge of delivering effective legal ethics education. They will consider the opportunities and challenges involved in four approaches: drama, mindfulness, positive psychology and distance learning. The use of a drama model for teaching core values will be considered as a way to provide an interactive and visual way of improving student confidence, resourcefulness, creative and communicative abilities. Incorporating mindfulness practice into legal education will be explored as a way to enable students to become more effective, ethical, happy and healthy advocates. The potential benefits of using principles of positive psychology within the legal syllabus will be explored and the panel will conclude by examining the effectiveness of virtue ethics as a model for delivering legal ethics education to distance learning students.

Roseline Ehiemua: *Developing a Drama Model for Teaching Legal Ethics*

This paper develops a drama model for the teaching of core values in legal ethics, namely: to uphold the rule of law at all times; be fair and just to fellow counsel and to clients; to avoid sharp practices; to stake one's honor and integrity when one's client's case is a fit and proper one for determination and resolution; not to decline a client's brief when one is sure of his guilt; not to perjure evidence to convict or acquit the accused at all cost; to exercise the highest degree of care, skill and professional competence in order to avoid liability for damages attributable to negligence; etc. The paper suggests that these values can be the

themes for drama synopsis to be deployed by law teachers in a legal ethics class while students are shared into groups and made to improvise and act out stories/developed plots around the shared core values of legal ethics. The aim of this paper is to provide a pragmatic teaching approach to legal ethics through drama in order to make the ethics of the legal profession have more experiential, rather than mere theoretical, value. Such ideals will make greater impact on those training to be lawyers than as presently observed in the lack of ethical standard amongst some new lawyers in Nigeria and other jurisdictions. The dramatic medium has the potential of creating lasting memories. It makes learning interactive and visual. It enhances resourcefulness, creative and communicative abilities and improves sense of confidence.

Katerina Lewinbuk: *Lawyer Heal Thy Self: Incorporating Mindfulness Into Legal Education & Profession*

The time for change in legal education and profession is now! Balancing traditional methods of analysis with mindfulness training in law school will enable students to focus and learn more efficiently, as well as develop their own professional identity, all while preparing them for the complexity of the legal field. Mindfulness practice will produce more effective, ethical, happy and healthy advocates. Law schools should provide students with the analytical and emotional training to care for and utilize their most valuable asset—their mind. The effect of heightened clarity and focus from mindfulness allows attorneys to produce more efficient work and empathetically represent clients. Through mindfulness meditation, the lawyer has an increased awareness of any possible bias or prejudice and can overcome these barriers in mediation, negotiation, and litigation. Mindful lawyers are overall better equipped to deal with the unexpected. Mindfulness is a westernized secular version of ancient meditation practices, involving non-judgmental awareness, paying attention deliberately, moment to moment, without judgment, to the workings of the mind and body. Mindfulness is becoming mainstream in America, with the National Institute of Health spending \$100M on research pertaining to its benefits, Time magazine featuring it on its cover and many more. It is now practiced by Pentagon leaders, Silicon Valley entrepreneurs, Google and General Mills employees, many law schools, and bar associations. The gist of the practice is attention training, which helps us establish a connection between our intent and action at the moment. As legal educators, we need to help our students develop the ability to better focus and minimize distraction. After all, isn't great lawyering about paying close attention?!

Caroline Strevens: *Positive Psychology Lessons for (Law) Teachers*

This paper will discuss the potential of a new approach to curriculum development that includes basic principles of positive psychology within the legal syllabus at the academic stage. Carol Ryff, Martin Seligman, Sonja Lyubomirsky, Todd David Peterson, and Elizabeth Waters Peterson have all written about the concept of subjective wellbeing (or happiness). According

to Martin Seligman positive psychologists focus on the study of “positive emotions, positive character traits and enabling institutions” as opposed to addressing mental illness. These studies embrace the concept of values and in some instances are informed by Aristotle’s ideas about happiness being based upon virtue and living a virtuous life.

Carol Ryff’s six category model of psychological wellbeing embraces: self-acceptance, personal growth, purpose in life, positive relations with others, environmental mastery, and autonomy. Following Aristotle she believes that in order to flourish a balance must be achieved.

This paper will discuss values in relation to subjective wellbeing and potential benefits of including psychological literacy within the law curriculum. Values are important in terms of motivation and meaning. An understanding of one’s own values and motivation supports psychological wellbeing. In turn this may affect ethical decision-making and resilience to stress. This can benefit both law students and law teachers.

This paper is informed by data from the Law Teacher Perceptions of Wellbeing survey conducted last summer by Caroline Strevens and Clare Wilson with financial support from the Legal Education research Network (LERN <http://ials.sas.ac.uk/lern/lern.htm>).

Hugh McFaul: *Distant Virtues: Legal Ethics in Distance Learning Education*

This paper will reflect on some of the pedagogical and philosophical issues that arise when teaching ethics to part time distance learning law students. It will briefly outline the institutional and regulatory context for UK legal ethics education and consider the pit falls of legalism for the ethical education of law students. Legalism has been described as an ethical outlook which is ‘the operative outlook of the legal profession: moral conduct is a matter of rule following, and moral relationships consist of duties and rights determined by rules.’ (McBarnet and Whelan 1991, p.849) It will explore whether virtue ethics can provide a suitable philosophical counterweight to legalism in the teaching of legal ethics. It will consider whether a focus on character development rather than ethical rule following might be a way to challenge legalism as operative outlook of the legal profession. It will consider the particular challenges of this approach in the context of distance learning legal education. McBarnet, D. and Whelan, C. 1991. The Elusive Spirit of the Law: Formalism and the Struggle for Legal Control. The Modern Law Review, Vol. 54, No. 6, pp. 848-873.

On the Frontier of Change: South African Legal Ethics Education (T-12)

Helen Kruuse, Rhodes University (South Africa) (Moderator); **Lesley Greenbaum**, University of Cape Town (South Africa); **Freddy Mnyongani**, University of South Africa (South Africa); **Nicola Whitear**, University of Kwa Zulu Natal (South Africa); **Lourens Grové**, University of Pretoria Law Clinic (South Africa); and **Prosper Nkala**, University of Pretoria Law Clinic (South Africa)

Helen Kruuse/Lesley Greenbaum/Freddy Mnyongani/Nicola Whitear: *On the Frontier of Change: South African Legal Ethics Education*

Twenty two years into a constitutional democracy, South African legal ethics education is at a critical juncture. Amidst massive changes to the legal profession’s organization and structure (through the Legal Practice Act 28 of 2014), legal education faces two challenges: first, South Africa’s Council on Higher Education (CHE) will be reviewing all law schools in the country as to their ‘fitness for purpose’ which ultimately entails accreditation decisions being made. The review focuses attention on whether there is appropriate and sufficient commitment to social justice, transformation and ethical values evident in the curricula taught at law schools. Second, the law profession and those in legal education face increasing criticism that the unquestioning acceptance of the South African lawyer’s role as neutral partisan is inappropriate for the present South African context.

In dealing with these two challenges, this panel evaluates the current state of legal education in South Africa, and then attempts to map out the contours of where it might be going in relation to the form and content of legal ethics within the South African LLB curriculum. More particularly, members of the panel consider whether it is possible to re-imagine an ‘African’ approach to lawyering which best aligns with South African history and constitutional culture. In this regard, we envision the inclusion of an ‘Afro-communitarian’ ethic to counter the individualism that dominates Kantian and utilitarian approaches to lawyering.

Part of the discussion will revolve around the outline a new research initiative which aims to address the lack of data available on South African law students’ commitment to social justice, ethics and altruism. In the light of such initiative, the panel will suggest how the demands of law students for a more relevant law curriculum which reflects an African ethos may open up possibilities for incorporating explicit ethics teaching into re-designed materials.

Lourens Grové and Prosper Nkala: *Teaching Students Ethics And Professionalism When and Where it Matters – Using a Clinical Setting To Teach Ethics Beyond the Ethics Course*

Most law faculties in South Africa, similar to their global counterparts, present courses in ethics and/or professional conduct to law students. These students invariably perform well when answering openly directed ethics questions.

However, it has been found, upon teaching (particularly applied negotiation skills) in a clinical setting that students often inadvertently breach principles of ethics and professionalism. Such breaches were initially regarded as unique to certain groups of students, but have since proven to be widespread, being almost universal in some cases.

All of these breaches may prove fatal in practice to negotiations or even the careers of some law students. Moreover, when a competitive atmosphere similar to which law students may experience in practice is cultivated, such breaches become more common and serious.

Some of the problems identified include:

- The pre-arranged structure of a negotiation group breaking down and several different “mini-negotiations” happening simultaneously between two groups;
- Students settling outside of their mandates or not carrying out their mandate to settle when they should;
- Students actively lying about surrounding circumstances in an effort to better their bargaining position;
- Groups engaging in blackmail on behalf of their ‘clients’;
- Students believing they understand and apply ethics when they demonstrably do not.

This presentation will expand and reflect on these problems and try to identify likely causes. We will also argue that ethics and professionalism, to be effectively taught, should not only be taught in a focused subject, but should also be embedded in general practical legal education.

Based on our experience, there are some particularly effective ways to teach ethics - which led some alumni to observe that the ethics lessons so taught are lessons they most vividly remember from their University educations. This approach will be discussed as well.

Pioneering Legal Ethics Courses in the Arab Countries of the Middle East: Case Studies from Qatar, Palestine and Egypt (T-13)

Mutaz Qafisheh, Hebron University (Palestine); **Mohamed Mattar**, Qatar University College of Law (Qatar) (Moderator); **Sahar Emam**, Menoufia University (Egypt); and **Essam Zanati**, Assuit University (Egypt)

This program explores the status of teaching legal ethics and professional responsibility in three universities in the Arab

world, Qatar University College of Law, Hebron University College of Law and Political Science in Palestine and Faculty of Law at Assuit University in Egypt. The law that covers the legal profession will be introduced, including the Qatari Law No 23 of 2006, the Palestinian Law No 3 of 1999 and the Egyptian Advocate Law of 1983. While these laws provide the basis for the attorney-client relationship, such as the confidentiality agreement, avoidance of conflict of interest, and qualifications for practice of law, they lack many of the ethical rules, principles, and guidelines that promote competence, continuous legal education, corporate social responsibility, and pro bono legal services. This session will address means of legal reform relying upon comparative models and best practices. The session will also present models of teaching legal ethics, either as a separate course, as a part of procedural courses, or within law clinics that were newly established in these universities. A number of students will present their experiences in learning about rules of legal representation, legal aid, legal education and legal advocacy, as well as the role of lawyers in defining issues of public interest, such as combating human trafficking, corruption or other illicit practices. Instructors will share their syllabi to demonstrate ways that have been used to incorporate clinical and experiential methods of teaching.

Mutaz Qafisheh: *Ethics Without a Law: The Crisis of Professional Responsibility in Palestine*

In Palestine, as the case in most countries of the Arab region, legal ethics are largely not codified. Most of the existing 12-law schools, if any, teach legal ethics. In the popular culture, the best lawyer is the liar. Honest lawyers are considered as weak and mostly remain obscure. There is no clear penalties, save to disciplinary measures by the Bar Association, for those lawyers who break client’s confidence, “sell” their clients to the other party, or miss a court session that leads the client to prison.

This paper explores the potential of reforming the system of legal ethics in Palestine as a case in point from the Middle East. It starts by discussing the lack of teaching legal ethics in law schools and the prospects of integrating teaching of ethics in the curricula. It then moves to analyze the practice of legal ethics as part of the Palestinian Bar Association’s rules, and suggest ways to reinforce the modest attempts to improve the status quo. It gives a background on legal education and how the currently booming legal clinics may contribute to the adoption of professional conducts, through training and pro-bono activities, for future lawyers. It offers certain directions for reforming legal ethics by learning from other experiences in the world, such as adapting the ABA’s “Model Rules of Professional Conduct” to the Palestinian context. It finally highlights obstacles facing the reformation of legal ethics and ways to overcome them.

Mohamed Mattar: *Incorporating Clinical Methods in Teaching the Fundamental Principles of Legal Ethics for the Legal Professions: The View from Qatar University College of Law*

Qatar University College of Law is the only academic institution in Arab universities that offers its students a separate, independent and credit hour course on legal ethics and professional responsibility. The course is taught by the first Clinical Professor of Law in the Arab region. The course utilizes the experimental and clinical methods of learning.

The purpose of this session which will be presented by students who took the course is to share their experience, knowledge, and values that they gained. While a traditional course in legal ethics addresses the attorney-client relationship, this course discusses this relationship by introducing to the students the concepts of corporate social responsibility, legal aid to the vulnerable communities and legal advocacy. It chooses combating corruption as an example of a public interest issue that should be the focus of attention of all lawyers. It also covers human trafficking as a case study for what ethical rules should a lawyer follow in presenting victims of crimes. Each panelist will share perspectives on different aspects (including the impact) of the program. The session will provide illustrations of how the instructor used interactive methods of teaching giving the students the greatest role. The law of Qatar that governs the practice of the legal profession is the Law No 23 of 2006. It consists of 77 articles. Every student was responsible for 5 articles and was asked to explain every article in light of international standards and comparative models and to provide court cases that apply the rule stipulated in the article. The result was an explanatory note or a legislative guide for the law that was produced in a student publication for the first time. The students were also asked to compile another publication on 100 best practices on legal ethics legislation utilizing the sources of the 94 diplomatic missions in Doha. To promote pro bono legal services to the vulnerable communities, students were instructed to conduct interviews with law firms inquiring into their corporate social responsibility policies and culture of volunteerism.

The session will also focus on how the course enhanced the skills of the students. The course included exercises on drafting a code of conduct for legal aid providers and drafting a contract detailing the attorney-client relationship. Finally students debated in small groups several issues including whether there are universal rules of ethics that may be implemented by lawyers around the world regardless of the national context, whether there are common rules of ethics that may apply to all legal professions or even all professions and finally whether a lawyer who has been assigned a case by the court can refuse legal representation on religious grounds. Copies of the syllabus of the course will be distributed among the attendees of the session.

Essam Zanati: *Role of Legal Clinics in Promoting Student Legal Ethics*

This paper includes a demonstration of Assuit legal clinic's outcomes relative to professional ethics. In particular, the clinic's activities, especially concerning women's and children's rights and the impact of human trafficking, have a great influence on the trends and conduct of students in the following areas: 1) using law for social interest; 2) the respect of privacy; 3) social inequality and discrimination; 4) women's status in rural regions; 5) enhancing women's capacity; 6) the independence of legal profession; and 7) pro bono responsibility.

Should Legal Ethics be Taught? Continental and Common Law Perspectives (T-14)

Cristina Garcia Pascual, University of Valencia (Spain); **Lughaidh Kerin**, Middlesex University (UK); **Olanike S. Adelakun-Odewale**; Lead City University (Nigeria); and **Massimo La Torre**, University of Catanzaro (Italy)

Cristina Garcia Pascual: *Legal Education without Legal Ethics*

Traditionally, professional ethics in the countries of continental law has not found its place in the curricula of law schools and has been largely, and in the best case, an internal discipline of professional bodies themselves. After the last wave of reforms brought about by the so-called Bologna plan, the situation in this regard has not changed. Legal education continues today being anchored in the accumulation of knowledge and information that, undoubtedly, is useful, but not effective, when facing the expertise required by legal professions, Llewellyn's "law jobs". In many of the new curricula the so-called *materias formativas*, what Germans call *Grundlagen*, have lost weight, this change being curiously justified in the name of greater specialization because of, we are told, the market demands. The market demands professionals, and professionals do not seem to need, in the eyes of this new spirit of time, the legal philosophical reflection, or the theory of argumentation and interpretation. Nor would they need any legal ethics. Surely, the reasons for this exclusion are easy to guess, some of which have a long tradition, and others are linked to the new times.

Lughaidh Kerin: *Undergraduates Law Students and Legal Ethics: A London Perspective*

This paper will explore some of the challenges of inculcating legal ethics into the curriculum at undergraduate level. It will do so in the context of a common law jurisdiction where the academic and vocational elements of legal education are often treated as separate and distinct.

It will briefly delve into specific jurisdictional (UK - England & Wales) and institutional (Middlesex University – London) constraints before focusing on the role of alternative dispute

resolution (ADR) as an avenue for students to learn about the realities of practice and the attendant ethical issues. It will submit that ADR role play and simulation exercises have the potential to bring to life this alien world for students, acting as a bridge supporting awareness of the interplay between legal and ethical issues in complex scenarios.

The paper will also touch upon broader efforts to encourage collegial buy-in to integrate ethical issues into different subjects throughout the life-cycle of a degree. The idea is thus to explore the mainstreaming of legal ethics across the curriculum.

The paper will conclude that to allow students to complete a law degree without appropriate exposure to legal ethics would be to do a disservice both to those students and to the profession, of which at least some will be future practitioners.

Olanike S. Adelakun-Odewale: *Rethinking the Approach to Legal Education and Legal Professional Ethics in Africa*

The role of lawyers in any democratic society cannot be over-emphasized. This is so because lawyers as judges, in private or corporate practice, in the academics or in government, shape the society and the lives of their fellow human beings. In Nigeria, lawyers' roles are most visible in litigation and to this end, the quality of justice achieved lies in the quality of decisions of the courts which are mainly based on the quality of arguments presented before the judges coupled with the ability of the judges to apply legal reasoning to facts laid before them. All these come down to the quality of legal education in the country. The curriculum at both the university and law school level is limited to theoretical general law knowledge and procedural law within the confines of the country. International law, as a course, is elective and students are hardly exposed to comparative law analysis at the undergraduate level. Also, the academic legal education trend in Nigeria is not moving with technology advancement around the globe thereby making law a limited profession for the bulk of people trained in law in Nigeria. In as much as great emphasis is placed on the ethics of the profession, the quality of lawyers that are turned out every year seems to be on the wane compared to international standard. The capacity of some Nigerian lawyers to compete healthily with their foreign counterparts is limited and this is as a result of the conventional methods of training lawyers in Nigeria. This paper will critically examine the present day curriculum for legal training with a view to identifying the setback and the need for a total overhaul or reform in legal training in Nigeria. The paper will analyze the result of comparative analysis of legal education in select African countries and the standard of the ethics of the profession. It will conclude with postulating a curriculum to enhance legal teaching and improve the quality of legal profession in Nigeria.

Teaching Legal Ethics in Historical, Social and Cultural Context (T-15)

José Carlos Llerena Robles, Universidad del Pacífico (Peru); **Sergio Anzola**, Universidad de los Andes (Colombia); **Nicolas Etcheverry**, Universidad de Montevideo School of Law (Uruguay) (Moderator); and **Sijan Guragain**, Kathmandu School of Law (Nepal)

Presentations in this panel seek to approach the role and purposes of legal ethics in different contexts. By highlighting the differences and particularities of Colombia, Nepal, Perú and Uruguay, the presentations aim to explain how the domestic context is a key factor in understanding the limits, possibilities and challenges of legal ethics in these developing countries. By focusing on the relevance of particular social, economic, and cultural characteristics of these four countries, the panel aims to promote a reflection of whether the project of legal ethics can be thought as a global issue, or if it is a parochial matter highly dependent on local variables.

Jose Carlos Llerena Robles: *The Challenge of Teaching Legal Ethics in Peru*

In Peru people, after politicians, don't trust in lawyers. It is usual to find a lawyer involved always in the news for bribe or corruption events. In this scenario there are many actors related with tackling this problem. My paper will analyze and explain the challenges of teaching legal ethics in Peru in order to tackle the bad reputation of our profession. First, it is important to know the Peruvian context. For such reason, in the first part of this paper we will explain the lawyer regulation in Peru, which includes the regulatory regime and also the efforts to promote legal ethics among lawyers and law students. Then we will explain and analyze the challenges in teaching legal ethics in Peru under the following categories: (i) teacher's role, (ii) curriculum, (iii) law school, (iv) students, and (v) profession. Finally, we will present some proposals and recommendations in order to improve legal ethics teaching.

Sergio Anzola: *Understanding the Silence of Legal Ethics in Colombian Legal Culture: Insights from Psychoanalysis*

The particular phenomenon of the clash between personal ethics and ethics of role experienced by practicing lawyers has been widely documented and discussed in American legal ethics scholarship. However, Colombian legal scholarship has not undertaken any efforts to talk or write about legal ethics in general or the tensions experienced by Colombian lawyers between personal ethics and ethics of role in particular. Taking this scenario as a premise, my PhD project seeks to understand why legal ethics in general and the clash between personal ethics and ethics of role in particular have not been studied in a country with the second highest rate of lawyers per capita and a very poor perception of lawyers' role in society. Instead of assuming that the lack of debate and research about legal ethics is a normal development

in the Colombian legal culture, or in inquisitorial systems, I propose to understand this particular and very odd silence as a symptom in the psychoanalytic sense. By using the psychoanalytical concepts of symptom, trauma and mechanisms of defense, I seek to understand how the tensions between personal ethics and ethics of role experienced by Colombian lawyers have been repressed or projected unto others. Also, I seek to trace which is the trauma experienced in the role of the lawyer that leads to this particular symptom.

Sijan Guragain: *Analysis on Teaching Legal Ethics: Stories of South Asia*

Growth in trade among South Asia countries has raised the role of lawyers exponentially. The legal profession in South Asia, unlike in West, is not the profession of choice of most intellectual and elite students. The best minds pursue careers in medical science and engineering, while ‘cunning’ students are considered fit for legal profession. In addition to that, the legal parlance as a whole is immature and not as rich as one sees in the West. In most parts of the region, lawyers are approached with caution and viewed as bloodsucker as opposed to the defender of rights. Students idealize making money through business (commercial law), making money by working for foreign organizations (human rights and environmental law), making money by charging percentage from clients (land law and family law) and so on. The common denominator is ‘making money’.

Simultaneously, law schools are trying to catch up with the psyche of law students and in an effort to neutralize the negative effect are coming up with ‘legal ethics’ as a credit course. This paper, on the above given background of professionalism in the region, endeavors to present a descriptive account of legal ethics education in the South Asian region, as well as to analyze how far its effects have been and what needs to be changed. The analysis put forward in the second part will feature legal experts, scholars, lawyers in the region and an empirical study by the author.

Nicolas Etcheverry: *Trust – Ethical And Cultural Attitude*

This paper is intended to explain, at least partially, the reasons for the approach of seeing Uruguay as a country integrated basically by people with a more untrusting mind and with a tendency to over-legislate rather than under-legislate. Our cultural Latin legacy of distrust and disorganized over-regulating spirit has been much more significant in our country than the Anglo-Saxon influence that relies on trust, diligence and personal effectiveness, as well as the trend to legislate as little as possible.

In the same way we intend to study the socio-economic causes of crime in a specific society, I will try to study the ethical and political causes of the individual and collective attitude of distrust existing in Uruguay. Our approach considers that most citizens in our country have, in general terms, a predominantly distrustful attitude, which is reluctant to changes and innovate, and that

this attitude promotes the over-legislation that, apart from being significant, is complex, sometimes illogical or contradictory, and results in something chaotic for the subjects of those regulations. We will analyze this attitude from two different points of view: the individual one, which could be called the ethical attitude, and the collective or social one, which could be called the cultural attitude. The distrusting attitude described implies, as it was already stated, a) a complex over-legislation, but also, b) limited and restrained social control, c) an expensive and inefficient control system, and d) a slack and ineffective sanction system.

Technology, Ethics, Professionalism and Legal Education (T-16)

Paula Schaefer, University of Tennessee College of Law (US) (Moderator); **Matthew Homewood**, Nottingham Law School (UK); **Francesca Bartlett**, TC Bierne School of Law, The University of Queensland (Australia); **Katherine Mulcahy**, The College of Law Australia (Australia); **Kylie Burns**, Griffith Law School (Australia); and **Lillian Corbin**, School of Law, University of New England (US)

Paula Schaefer, Matthew Homewood, Francesca Bartlett and Katherine Mulcahy: *Technology, Ethics, and Legal Education*

This panel will consider various ways that technology can be used to integrate attorney professional conduct issues into legal education. We will discuss how technology can be utilized to create and deliver simulated case files to students in Civil & Criminal Litigation and eDiscovery classes. These simulations require students to develop competence in using technology and to comply with professional conduct obligations in resolving ethical issues. Technology and social media is an inescapable part of the modern attorney’s professional life. We will discuss how social media scenarios can be included in an attorney ethics class to prompt discussion of lawyers’ ethics and regulatory approaches to professionalism. Finally, we will consider how online learning experiences that incorporate ethics issues can be utilized to provide students post-graduation “practical legal training” as a prerequisite to licensing in Australia.

Kylie Burns and Lillian Corbin: *E-Professionalism, Legal Professionalism and Legal Education: Ethical Behaviour and the Use of Technology*

Legal educators are primarily charged with preparing law students for their entry into the legal profession. More specifically this means introducing students to the concept of ‘professionalism’ – the idea that those in the profession have shared norms, high standards of competency and conduct, the ability to exercise professional judgment and have a sense of public obligation. Traditionally this called for a focus on the physical lawyer/client, lawyer/lawyer, or lawyer/court communications.

However, legal providers and courts increasingly utilize social media as part of professional practice. In addition, the current generation of law students are heavy social and professional users of social media such as Facebook, Instagram, Snapchat and Twitter. In this digital age, preparing students for life as a lawyer is even more complex than in the past. This paper will argue that the legal profession and legal education needs to encompass and implement a concept of e-professionalism i.e., 'the development of an online persona that is congruent with the values and ethics of the profession and portrays use of self in a way that is respectful and demonstrates professional integrity' (Chenoweth & McAuliffe, 2015, p. 306). Or put differently 'as the attitudes and behaviors that reflect traditional professionalism paradigms but are manifested through digital media' (Joseph M. Kaczmarczyk et al, 2013, 165). This paper will initially draw on the academic literature to show that e-professionalism has been acknowledged by the health and other disciplines in their curricula, but law has yet to substantially engage with this challenge. It will suggest that lawyers, as the gatekeepers of the law, are responsible for the administration of justice and ensuring the dignity of individuals in society. It is therefore important that they adhere to high ethical standards in social media use. The paper will then canvass what I means, in practical terms, to assimilate the principles of e-professionalism into legal education e.g., for students to be aware of how their communications with their peers, their teachers and others using emails and posting messages onto Learning Managements Systems can damage their integrity and illustrate how similar instances occurring when they are professionals can undermine the public's confidence in the legal profession more broadly. In addition, and perhaps even more importantly for the employment prospects of law students, the paper will illustrate how poor behavior on social media sites can have detrimental consequences. Finally the paper will argue for a concept of e-professionalism that encompasses the positive aspects of social media use in the legal profession and equips lawyers and students to use social media in ways that enhance employability, the reputation of the profession and access to justice.

The Role of Ethics in Advertising, Regulation and Teaching: Beyond the Rules of Professional Conduct (T-17)

Akin Oluwadayisi, Adekunle Ajasin University (Nigeria); **Omoyemen Lucia Odigie-Emmanuel**, Nigerian Law school (Nigeria); and **Mohammad Shafeeq ur Rehman**, Waheed Riaz Law Associates (Pakistan)

Akin Oluwadayisi: *Attraction of Business and Restriction in Legal Practice in Nigeria: The Necessity for Globalization of the Concept through Legal Education*

The legal practice is perceived by many to be a noble profession where high professional standards and ethics are maintained. In addition, it is a profession for the diligent; those who know their worth and have what it take to discharge their professional

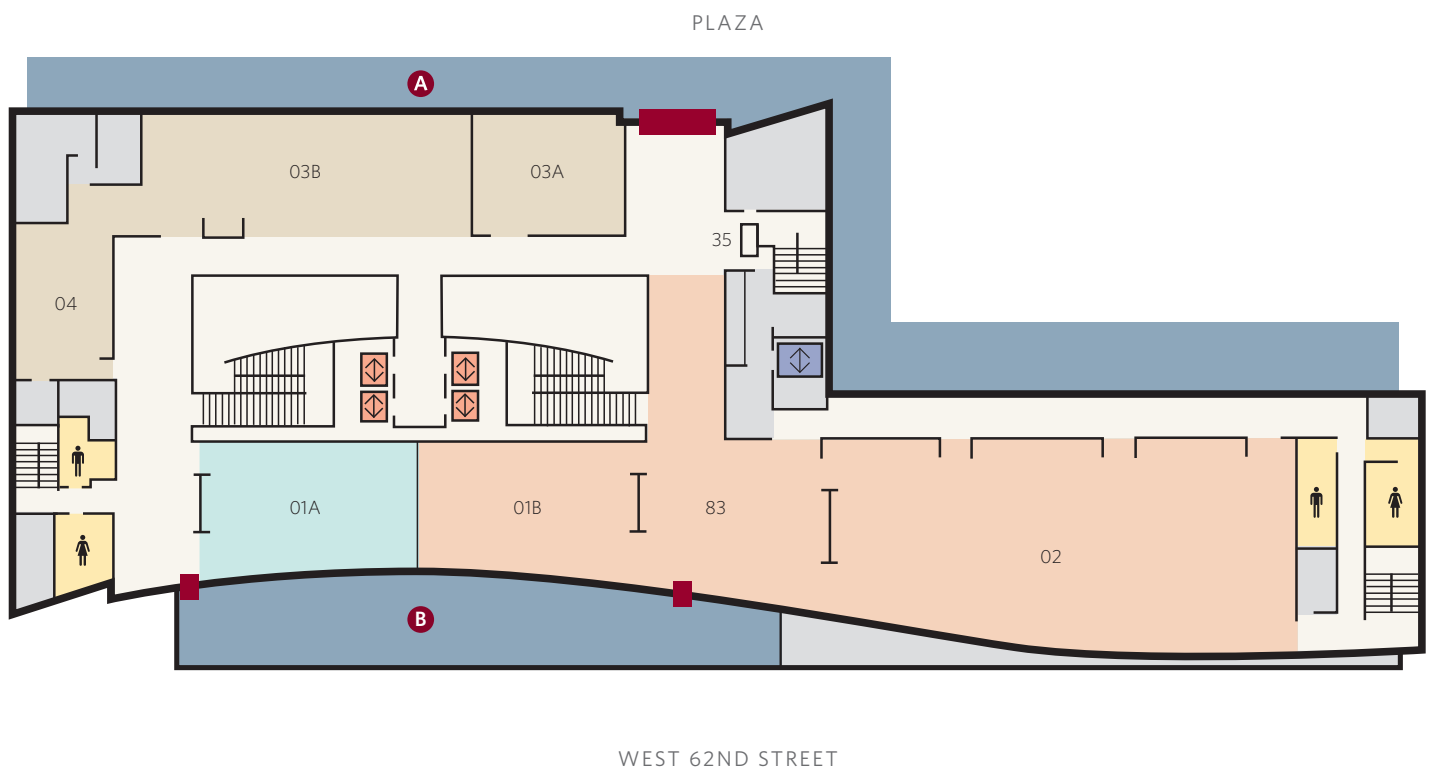
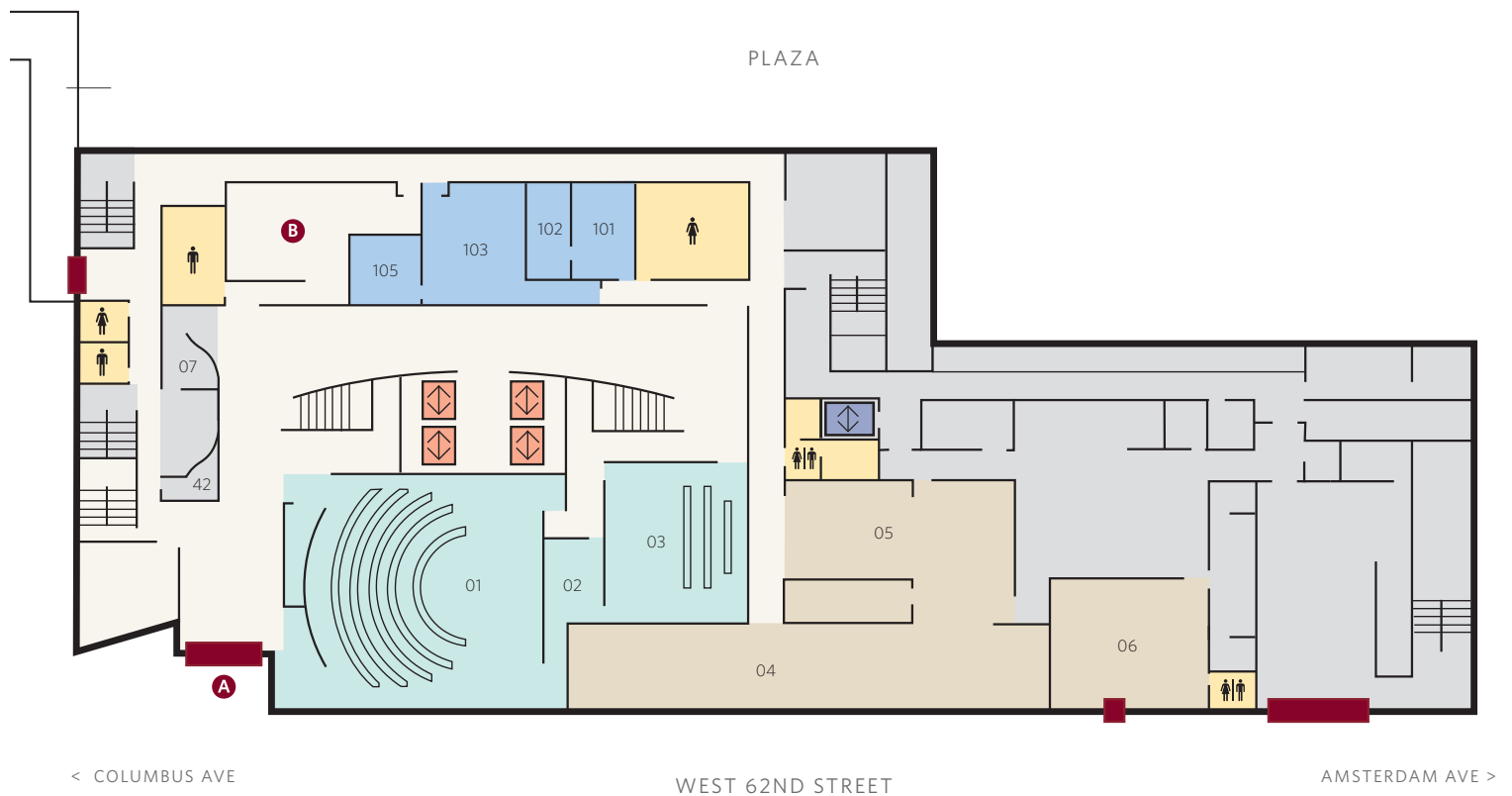
responsibility. However, the practice in many jurisdictions where advertisement of legal practice or law firm is permitted does not encourage the display of skills and can kill brilliant performance and nobility accorded the profession. It puts law for sale and allows law firms with money to advertise and attract clients, even when they do not possess the ideal or desired qualities, thereby potentially deceiving prospective clients. Thus, this paper explores some of the provisions of the Rules of Professional Conduct in Nigeria which restrict the attraction of business in the practice of law with some exceptions. It will also compare the implications of the practice with other jurisdiction(s) in order to discover the value of it. The paper further advocates the globalization of the concept through legal education in law faculties in the Universities and law schools.

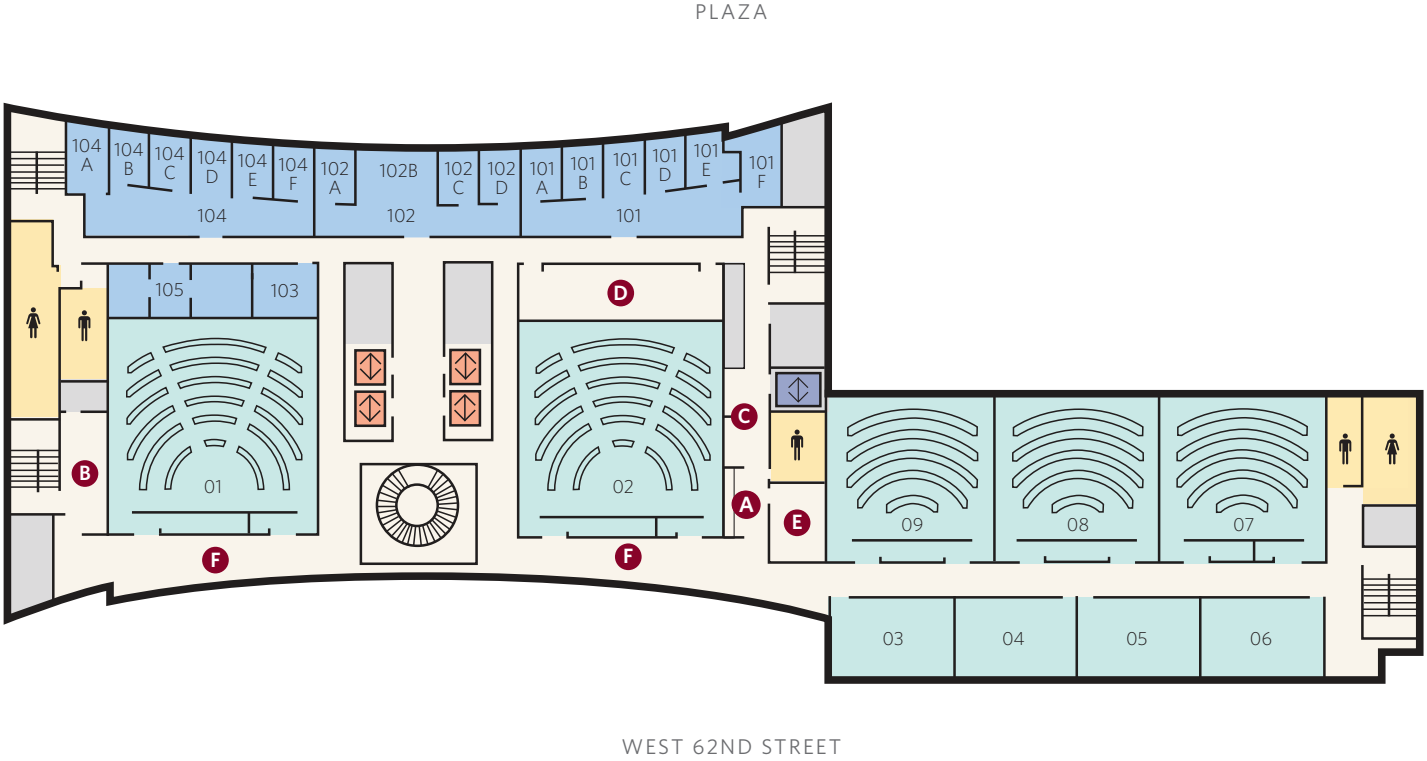
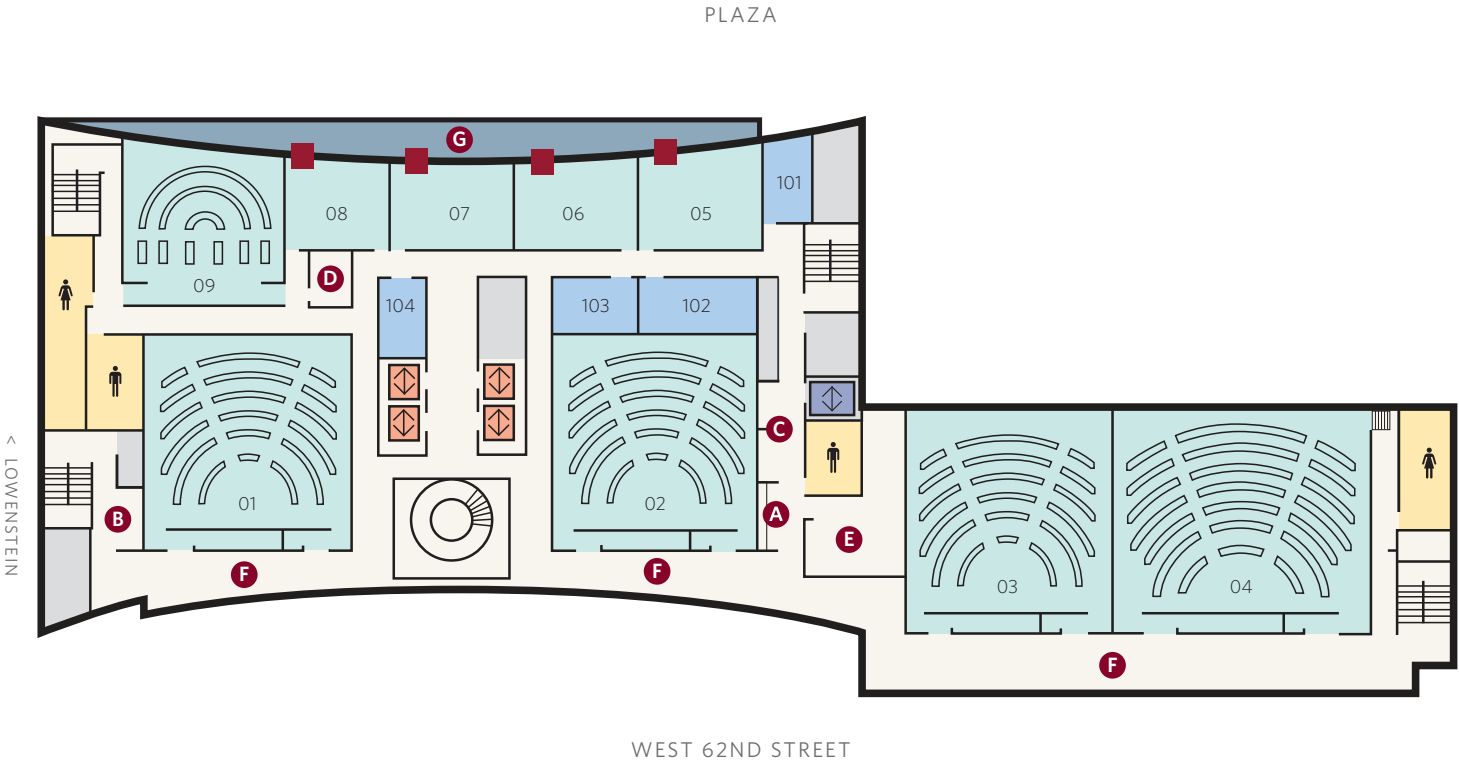
Omoyemen Lucia Odigie-Emmanuel: Expanding the Scope of Legal Ethics Curriculum in Nigeria: A Multidisciplinary Approach to Teaching Legal Ethics

The scope of ethics curriculum for training of lawyers differs from one jurisdiction to another depending on the code of ethics in particular jurisdictions. Limiting the scope of what to teach in ethics classrooms to the content of the Rules of Professional Conduct has become problematic in the face of current global realities. This issue is evident in the ethical dilemmas faced by lawyers resulting in recurrent disciplinary action against lawyers in recent times. Although many reasonable minds condemn the actions as unethical, they often fall outside the scope of ethics as defined by the rules. It becomes imperative to revisit the definition and scope of ethics, expand the scope of what is defined as unethical and adopt a paradigm that allows students to adopt a multidisciplinary approach to learning ethics.

Mohammad Shafeeq ur Rehman: Legal Ethics and the Role of the Regulator

Legislation on legal ethics duly enacted in this jurisdiction needs compliance from all corners of the legal profession, particularly the input of regulators. In fact, most of the responsibility lies on the regulator for the implementation of ethical rules without any problems. Additionally, the bar councils are the regulators, so they need to act to maintain its true spirit. In the present scenario, however, no positive efforts by the bar councils are being made to maintain the true spirit and instead this area is being neglected. It is not only being neglected by the regulator, but by the institutions of the legal profession and judiciary. Though the intentions of the above players may not be in doubt, the results are not according to the will. Suggestions for maintaining the spirit and improvement of legal ethics by the regulator will be given in the detail of this paper.





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